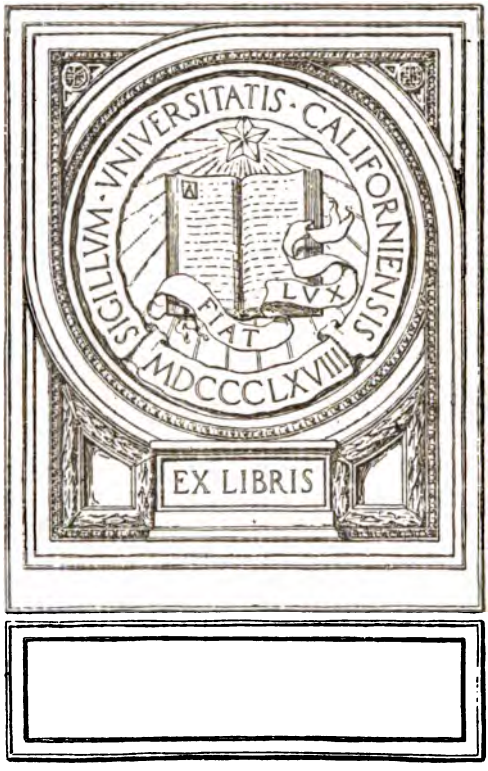

The University of Chicago

A HISTORY OF THE AUSTRALIAN BALLOT SYSTEM IN THE UNITED STATES

U. S.

Brown

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TABLE OF CONTENTS

PREFACE

The purpose of this dissertation is to trace the introduction and development of the Australian ballot system in the United States of America.

The first portion of the thesis (chapters i and ii) discusses the demand for reform which grew out of the evils of the unofficial ballot. The unofficial ballot developed from the use of voting papers by certain American colonies, in particular New England; and it gradually superseded the viva voce method. This plan proved very defective, and in the period of corruption following the Civil War it was made the instrument of great abuse. This led to the introduction of the Australian system, which provided a secret ballot, furnished by the state and supplied to the electors on the day of election within the polling-place, and marked in secret by the electors. The second portion of the thesis (chapters iii, iv, and v) treats in detail the development and present status of the Australian ballot in the United States. The third portion of the thesis (chapter vi) discusses the attitude which the courts have taken toward the secret ballot. In Appendix A is printed the text of the original South Australian Ballot Act, the text of which is not in print in any of the large libraries of the United States.

This dissertation takes up a study of the ballots used in the election of public officers only. Primary ballots are not included.

The material used has been primarily the session laws, digests, and codes of the states, and the decisions of the courts, although newspapers and periodicals and the debates of constitutional conventions were also employed. A bibliography covering the field is given in Appendix B.

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CHAPTER I

THE MANNER OF VOTING BEFORE THE INTRODUCTION OF THE AUSTRALIAN BALLOT SYSTEM

1. THE NEW ENGLAND STATES

Following the contemporary practice in England,[1] the governor and other officers in New England were at first elected by the view, or the showing of hands. This system was soon abandoned, and according to Governor Winthrop, in 1634 and thereafter in Massachusetts, "the Governor and deputy were elected by papers wherein their names were written."[2] A special procedure was used for the election of assistants. The governor formally named one man; the people all went out and came in at one door, and every freeman dropped a paper into a hat. Those voting for the candidate turned in a paper with a figure or scroll on it, while the others handed in blanks.[3] In 1643 this method of electing assistants was abandoned in favor of the corn-and-bean ballot. In the acts of 1636 and 1653, it was enacted that it should be lawful for the freemen of every town to choose by papers deputies to the General Court.[4]

The use of the ballot, or papers, seemed to have been entirely for convenience and with no object of secrecy. This is shown by an enactment of 1647, whereby it was provided that the governor, deputy, major-general, treasurer, secretary, and commissioners were to be elected by writing the names of the persons on open papers, or papers once folded, "not twisted nor rouled up, that they may be the sooner perused."[5]

The history of the other New England colonies is very similar to that of Massachusetts. In organizing the Rhode Island government of 1647,[6] the election of officers by papers was agreed to. The Hartford Constitution of 1638 definitely provided for the election of officers by written papers.[7] The constitutions of all the New England states, adopted during, or immediately after, the Revolutionary War, pro-

[1] Cox, *Ancient Parliamentary Elections*, p. 121.

[2] Bishop, *History of Elections in the American Colonies*, p. 141.

[3] *Ibid.*, p. 142.

[4] *Colonial Laws of Massachusetts*, ed. 1660–72, p. 145.

[5] *Ibid.*, p. 149.

[6] *Rhode Island Colonial Records*, I, 148.

[7] Bishop, *History of Elections in the American Colonies*, p. 150.

vided for the election of officers by the written ballot.[1] The same system was gradually extended to the election of local officers. In a law passed on February 28, 1797, the General Assembly of Vermont enacted "that the several officers [i.e., town officers] aforesaid, shall be chosen by ballot, or such other method as the voters present shall agree upon."[2] New Hampshire in 1804 directed the town clerks to be chosen by ballot.[3]

The ballots used in the eighteenth and early part of the nineteenth century were written by hand; but with the great increase in the number of elective offices this became a very laborious task. This difficulty was met in Massachusetts by a decision of the Supreme Court. The plaintiff had, in the election of 1829, tendered a printed ticket containing his vote for fifty-five persons. This ticket was rejected, and on appeal the court held that printed votes were written votes within the meaning of the constitution, which required that "every member of the House of Representatives shall be chosen by written votes."[4] Maine[5] in 1831 and Vermont[6] in 1839 authorized by statute the use of either printed or written ballots. Five years later Connecticut accomplished the same result by an amendment to its constitution.

This legalization of printed tickets was accompanied in Maine by the requirement that ballots should be printed on clean white paper, without any distinguishing mark or figure besides the names of the persons voted for and the office for which each was intended; and colored ballots were forbidden. In Massachusetts the direct result of the case of *Henshaw* v. *Foster* was that the parties began to print tickets on varied-colored paper, which destroyed the secrecy of the vote.[7] In 1839 the system was made even worse by an act requiring ballots to be deposited in the ballot box, open and unfolded.[8] This was as public as the viva voce mode and opened the way to bribery and intimidation. After many efforts, in 1851 the liberals, consisting of Free-Soilers and Democrats, passed the envelope law. This required that votes for governor, lieutenant-governor, state senators and representatives, presidential electors, and

[1] Connecticut Constitution, 1818, Art. VI, sec. 7; Massachusetts Constitution, 1780, ch. 1, sec. 3, Art. III; Maine Constitution, 1820, Art. II, sec. 1; New Hampshire Constitution, 1792, Part II, secs. 14, 22; Vermont Constitution, 1777, ch. 2, sec. 17; Rhode Island Constitution, 1842, Art. VIII, secs. 1–3. The written ballot was used in Rhode Island by the middle of the seventeenth century.

[2] Vermont Digest, 1808, ch. 41, sec. 5. [3] New Hampshire Laws, 1815, p. 249.

[4] *Henshaw* v. *Foster*, 9 Pickering (Mass.) 312.

[5] Maine Laws, 1831, ch. 518. [6] Vermont R.S., 1839, p. 38.

[7] *Tracts on the Ballot*, No. 5, article by Amasa Walker.

[8] Massachusetts Acts and Res., 1839, p. 16.

representatives in Congress should be deposited in the ballot box in a sealed envelope. These envelopes were of uniform size, color, quality, and appearance, and were furnished by the secretary of state to the town and city clerks, and distributed on the day of election by sworn clerks, who were stationed in the same room with the ballot box. Making, stamping, or selling any imitation of the official envelope was prohibited under penalties.[1] In 1853 the conservatives came into power and, not daring to repeal the law, destroyed its value by making the use of the official envelope purely optional. The elector could deposit his ballot in a sealed envelope, or without the envelope, open and unfolded.[2] The voters who could be bribed or intimidated of course were forced to choose the latter method. In the constitutional convention of that year the compulsory use of the official envelopes was proposed, but, by a close vote, was defeated by the voters. The year following the American party carried the state and attempted to restore the law. It passed the lower house, but was defeated in the Senate.[3] In Rhode Island the use of an official envelope was made obligatory in 1851.[4] This was soon abandoned in favor of an optional use of the official envelope,[5] as in Massachusetts.

2. THE MIDDLE EASTERN STATES

During the colonial period both the viva voce method and the ballot were used in the middle eastern states.

In Pennsylvania the framers of government of 1682 and 1683 required elections to be by ballot. Yet, from the disputed elections of 1689, proof was furnished of a great lack of uniformity in the method of voting. One member stated that the ballot was used only when doubt existed as to the number of voices. Another asserted that the members from Philadelphia county only were elected by ballot. A third said that the election was decided by a black and white bean ballot.[6] By an act of the legislature in 1706, the use of the written ballot was continued and provision was made for the illiterate voter.[7] If the illiterate voter brought a ticket to the polls, the judge of election was required to open the ticket and to read aloud the names written thereon, and to ask the elector if these were the persons for whom he wished to vote. If the answer was in

[1] Massachusetts Acts and Res., 1851, ch. 226; 1852, ch. 234.

[2] *Ibid.*, 1853, ch. 36.

[3] *Tracts on the Ballot*, No. 5, pp. 15–18.

[4] Rhode Island Laws, 1851–53, p. 884.

[5] Rhode Island Public Laws, 1857, pp. 83–84.

[6] McKinley, *The Suffrage Franchise in the Thirteen English Colonies*, p. 277.

[7] Bishop, *History of Elections in the American Colonies*, p. 169.

the affirmative, the ballot was deposited in the box provided for that purpose. In case such elector brought no ticket he could give verbally the names of the candidates of his choice.

Elections in Delaware were conducted practically the same as in Pennsylvania. In the concessions and agreements granted by the proprietors of West Jersey in 1676–77, provision was made for the use of "balloting trunks."[1] The surrender of this colony to the crown in 1701 caused the English system of viva voce voting or voting by the show of hands to be introduced. This latter method was also used at elections in the royal colony of New York. In the constitution of New York of 1777[2] authority was given the legislature to provide for the election of representatives, senators, and governor by the ballot; and if this method was found inconvenient or mischievous, the legislature by a two-thirds vote could return to the viva voce system.[3] The legislature at first provided only for the election of the governor and lieutenant-governor by the ballot; but in 1787 this was also extended to the members of the legislature.[4] Later, town officers were directed to be chosen by ballot.[5] New Jersey, by statute, in 1794 provided for the election of members of the legislative council, General Assembly, and sheriffs, and coroners of counties by the ballot.[6]

When they were presented for voting the ballots used in these states were generally required to be folded so as to conceal the writing thereon. Delaware specifically prohibited any examination of the ballot at the time it was presented for voting, except to determine whether it was single.[7] The use of the printed ballot came earlier in this group than in the New England states. Its use was authorized in Pennsylvania in 1799,[8] in Delaware in 1811,[9] in New Jersey in 1820,[10] and in New York in 1822.[11]

3. THE SOUTHERN STATES

During the colonial period both the viva voce system of voting and the ballot were known in the South. Before the Revolution, in Virginia, Maryland, and Georgia the English method was adopted,[12] while in

[1] McKinley, *Suffrage Franchise*, p. 245. [2] Bishop, *History of Elections*, p. 156.
[3] New York Constitution, 1777, secs. 6, 17.
[4] Poore, *Charters and Constitutions*, II, p. 1333.
[5] New York Laws, 1809, ch. 157, sec. 8.
[6] New Jersey R.S., 1821, p. 273. [7] Delaware R.S., 1829, p. 177.
[8] Pennsylvania Laws, 1700–1810, III, 345–46.
[9] Delaware Laws, 1806–13, p. 429.
[10] New Jersey R.S., 1821, p. 744. [11] New York Laws, 1822, ch. 250, sec. 7.
[12] Bishop, *History of Elections in the American Colonies*, p. 156.

South Carolina and in North Carolina, except for the period from 1760 to 1776, the ballot was used.

The viva voce system was introduced early in the history of Virginia, and is implied in the phrase "major part of voices" used in 1624;[1] and in 1646 this method was made compulsory. In 1785 it was provided by law that if the election could not be determined by the view, the poll should be taken.[2] The sheriff obtained a sufficient number of writers, who were put under oath to take the poll impartially. The sheriff delivered a poll-book to each writer, who, by drawing lines, divided the book into as many columns as there were candidates. The name of each candidate was written at the head of a column, and under his name in the same column, the names of the electors voting for him.

In *The End of An Era*, J. S. Wise gives a picture of the viva voce scheme in operation:

> In those days, voting was done openly, or viva voce, as it was called, and not by ballot. The election judges, who were magistrates, sat upon a bench with their clerks before them. Where practicable, it was customary for the candidates to be present in person, and to occupy a seat at the side of the judges. As the voter appeared, his name was called out in a loud voice. The judges inquired, "John Jones (or Smith), for whom do you vote?"—for governor, or whatever was the office to be filled. He replied by proclaiming the name of his favorite. Then the clerks enrolled the vote, and the judges announced it as enrolled. The representative of the candidate for whom he voted arose, bowed, and thanked him aloud; and his partisans often applauded.[3]

This method of voting was entirely public, and, even to a greater extent than the unofficial ballot, opened the way to bribery and intimidation. Its use was abandoned by North Carolina[4] in 1776, Maryland[5] and Georgia[6] in 1799, Arkansas[7] in 1846, Missouri[8] in 1863, Virginia[9] in 1867, and Kentucky[10] in 1890. In the other southern states the viva voce method of voting was not used.[11]

[1] McKinley, *Suffrage Franchise*.
[2] Virginia R.C., 1814, I, 28.
[3] J. S. Wise, *The End of an Era*, pp. 55–56.
[4] North Carolina Constitution, 1776, secs. 2, 3.
[5] Maryland Constitution, 1799, Art. VI, sec. 2.
[6] Prince Digest (Ga.), 1822, p. 130.
[7] English Digest (Ark.), 1848, ch. 61, sec. 30.
[8] Missouri G.S., 1866, ch. 2, secs. 12, 14.
[9] Virginia Constitution, 1867, Art. III.
[10] Kentucky Constitution, 1890, sec. 147.
[11] The ballot has been used in South Carolina since 1683 (McKinley, *Suffrage Franchise*, p. 141). The ballot was adopted by Tennessee in 1796 (Constitution, Art. III, sec. 3); by Louisiana in 1812 (Constitution, 1812, Art. VI, sec. 13); by Alabama in 1812 (Digest, 1823, p. 267); and by Florida in 1828–33 (Duval, *Public Acts*, 1839, pp. 340, 343–44).

4. THE NORTH CENTRAL AND WESTERN STATES

The viva voce method was at first introduced into the Northwest Territory.[1] The opportunities that it gave for intimidation soon caused its repeal. Governor St. Clair in 1800, in an address to the legislature, spoke of the fact that creditors were using their power over debtors to make them vote for certain candidates on promises of extending the time for payment. He recommended the substitution of the ballot in place of the viva voce method.[2] On December 9 of the same year the territorial legislature enacted that in all elections the manner of voting should be by ballot.[3] Each of the north central states, except Illinois, on its admission into the Union provided in its constitution that all elections should be by ballot.[4]

In the western group of states the ballot was generally adopted. Texas[5] and Oregon,[6] in fact, constitute the only instances the writer could find of the use of the viva voce system.

5. THE FORM OF THE BALLOT

By the middle of the nineteenth century the ballot was used in almost all of the United States. The term "ballot," however, meant one or several pieces of paper which contained the names of the candidates and the designation of the offices, and which were used by the electors in voting. The ballots could be either written or printed; but were, as a matter of fact, almost always printed.

In appearance and form the ballots varied in different states and in different elections. The ticket of each party was separate, and, as a general rule, could be distinguished, even when folded, from all other tickets as far as it could be seen. Frequently the party tickets were of a different color. In a municipal election in Massachusetts the Republicans used a red ticket and the opposition a black one; and in the same

[1] The act of 1794 was plainly viva voce (Chase, *Statutes of Ohio*, ch. 102, p. 241).

[2] Smith, *The St. Clair Papers*, II, 505–6.

[3] Ohio Constitution, 1802, Art. IV, sec. 2; Indiana Constitution, 1816, Art. VI, sec. 2; Michigan Constitution, 1835, Art. II, sec. 2; Iowa Constitution, 1846, Art. II, sec. 6; Wisconsin Constitution, 1848, Art. III, sec. 3; Minnesota Constitution, 1858, Art. VII, sec. 6; Illinois Constitution, 1818, provided for the viva voce mode, but empowered the legislature to change it; the constitution of 1847 provided for the ballot.

[4] Chase, *Statutes of Ohio*, Vol. I, ch. 140, pp. 505–6.

[5] Gammel, *Laws* (Texas), pp. 1517–18.

[6] Oregon Constitution, 1857, Art. II, sec. 15.

state in 1878 the Republican ticket had a flaming pink border which threw out branches toward the center of the back, and had a Republican indorsement in letters half an inch high.[1] In another election in Massachusetts the Republicans used a colored ballot, while the Democratic ticket was white with an eagle so heavily printed as to show through the ballot.[2] In one election in Orangeburg County, South Carolina, the Republican ticket was of medium-weight paper, with the back resembling a playing-card, and, according to statements made, could be recognized across the street. The Democrats had a tissue-paper ticket of a pale-blue color. There were two sizes of this tissue-paper ticket, so that the smaller could be folded in the larger one, and an outsider could not tell that there was more than one ticket being voted.[3] The Democratic ticket used at the polls in Charleston, South Carolina, had a red checked back and was printed with red ink.[4] Tissue-paper ballots were used quite extensively throughout the South.

One object in making the ballots so easily distinguishable was to enable the ignorant elector to obtain the ticket he wished to vote; but it was usually easy to counterfeit the opposition ticket. A facsimile of the opposing party ticket would be printed, containing, however, all or sometimes only a few of another party's nominees. This was so skilfully done at times as to deceive even the most careful voter. Another reason for making the tickets distinguishable was to discover how the elector voted. This was the greater of the two evils, and greatly facilitated corruption and intimidation.

During the Civil War and Reconstruction period this condition became intolerable, and led to the enactment in fifteen states of laws prescribing the color of the paper and the kind of ink to be used in the printing of the ballot. Maine[5] was the pioneer state in this movement, the law in this state having been passed as early as 1831. Maine was followed, in 1867, by Connecticut,[6] Indiana,[7] and Virginia;[8] by Ohio[9]

[1] *Nation*, XXVIII, 82–83.

[2] Forty-sixth Congress, second session, Report 497, p. 23.

[3] *A Corrupt Ballot Box and Prostituted Ballots*, p. 56. For an illustration of the kind of tickets used, see *Congressional Record*, XIII, Part 5, p. 4343.

[4] Senate Report 855, Serial No. 1840, p. xxxv.

[5] Maine Laws, 1831, ch. 518, sec. 3.

[6] Public Acts of Connecticut, 1867–71, p. 135.

[7] Davis, *Statutes of Indiana*, p. 439.

[8] Virginia Laws, 1869–70, ch. 76, sec. 31.

[9] Swan and Sayler (Ohio), *R.S.*, 1868, p. 343.

and West Virginia[1] in 1868; by Kentucky[2] and Illinois[3] in 1872; by Missouri[4] and Florida[5] in 1877; by Massachusetts[6] and Texas[7] in 1879; by New York[8] in 1880; and by Delaware[9] and Alabama[10] in 1881. The provisions of the New York law are typical. It provided that "each and all ballots used at any such election shall be upon plain white printing paper, and without any impression, device, mark, or other peculiarity whatsoever upon or about them to distinguish one ballot from another in appearance, except the names of the several candidates, and they shall be printed with plain black ink."[11]

This law also failed to accomplish its purpose, because the several parties used different shades of white. In Ohio, for example, the Republicans used a very white paper, while the Democrats adopted a cream color. So it was still possible to tell what ticket an elector voted. California[12] and Oregon[13] tried to secure a uniform weight and color of paper by requiring the ballots to be printed on paper furnished by the secretary of state.

There was great variety in the number of tickets used in the different states. Twelve states required the names of all candidates voted for at an election to be written or printed on a single ticket.[14] Massachusetts allowed the elector to vote for the several candidates on a single ballot or on separate tickets.[15] The elector in New York in 1882, or Florida in 1889, had to vote for the candidates of his choice on eight tickets, while a voter in Nebraska in 1887 was compelled to use nine.

The states which required separate ballots for different offices had as many combinations as the particular legislature thought desirable, and it is almost impossible to discover any common principle guiding their actions. Six states required officers voted for by all the electors of the

[1] Code of West Virginia, 1868, ch. 3, secs. 17–18.

[2] Kentucky G.S., 1873, Art. XIII, ch. 33.

[3] Hurd (Illinois), *R.S.*, 1874, p. 458.

[4] Missouri R.S., 1877, sec. 5493.

[5] McClellan (Florida), *Digest*, 1881, p. 493.

[6] Massachusetts Acts and Res., 1879, ch. 286, sec. 2.

[7] Gammel, *Laws* (Texas), VIII, p. 1420.

[8] New York Laws, 1880, ch. 360, sec. 1.

[9] Delaware Laws, 1887, ch. 328, secs. 1, 2.

[10] Alabama Code, 1887, sec. 369.

[11] New York Laws, 1880, ch. 366, sec. 1.

[12] California Code, 1872.

[13] Hill, *Code and General Laws*, II, 1181.

[14] New Hampshire, Delaware, West Virginia, New Jersey, Illinois, Ohio, Indiana, Wisconsin, Missouri, Kansas, Nevada, and Colorado. Florida and Louisiana had a single ticket part of the time.

[15] Massachusetts Acts and Res., 1839, p. 16.

commonwealth to be elected on a separate ticket. Five states required separate ballots for presidential electors. Seven states placed candidates for Congress on a distinct ticket. Other offices placed on a separate ballot were: judicial, in four states; justice of the peace, in three states; county officers, in four states; and city or town officers, in three states.[1] Constitutional amendments were sometimes printed separately.

The size of the ballot was regulated in only five states: Massachusetts,[2] Delaware,[3] Indiana,[4] Alabama,[5] and California.[6]

Since the law made no provision for the printing or distribution of the ballots, the party organizations, prior to the day of election, saw that the tickets were printed. Usually a select committee on printing took charge of the entire matter of getting up the ballot, seeing that it conformed to the law, and that the tickets were properly folded, bunched, and distributed throughout the organization. In New York City[7] the tickets for Tammany Hall and the county democracy were distributed under the supervision of a committee of the organization. The assembly district bag was delivered to the assembly district leaders, and by them to the election district leaders. In the Republican party, the tickets were delivered to the district leaders. Thus the district leaders had control of a vital part of the election machinery. They could destroy or fail to distribute the tickets, and then there would have virtually been no election.

The tickets were given to the voter in advance of the election, or they could be obtained near the polling-place on the day of election. Each party customarily had a ticket booth for each polling-place and attached to it a number of ticket peddlers.

6. THE MANNER OF VOTING

As the elector approached the polling-place, he was met by these ticket peddlers, who were only too anxious to supply him with their party tickets, and a close watch was kept to see what party ticket he

[1] City elections held at a different time from general elections of course had to have separate ballots.

[2] Massachusetts, 1879, ch. 286: the ballot was to be 4½ inches wide and 12 inches long.

[3] Delaware, 1881, ch. 328: the ballot was to be 6 inches long and 3 inches wide.

[4] Indiana, 1881, ch. 47: the ballot was to be 3 inches wide.

[5] Alabama Code, 1881: the ballot was to be not less than 5 nor more than 10 inches long.

[6] California Political Code, 1872: the ballot was to be 12 inches long and 4 inches wide.

[7] Ivins, *Machine Politics*, p. 51.

selected. The tickets were usually folded, and, from the voter's habit of carrying them in the vest pocket, become known as "vest-pocket tickets." The provisions of the California law of 1850 are typical of the procedure inside the polling-place: "Whenever any person offers to vote, the inspector shall pronounce his name in an audible voice, and if there be no objection to the qualification of such person as an elector, he shall receive this ballot, and in the presence of the other judges put the same, without being opened or examined, into the ballot box."[1]

Seven states required the ballot to be numbered, and the same number recorded on the list of voters opposite the voter's name. This worked against the secrecy of the ballot[2] by making it possible to identify the ballot cast by any elector.

Even more open to abuse was the provision in three states permitting the voter to write his name on the back of the ballot. The Pennsylvania constitution of 1873 provided that "any elector may write his name upon his ticket, or cause the same to be written thereon and attested by a citizen of the district."[3] What an opportunity for fraud this presented! The signature of the elector was required by the Rhode Island[4] laws of 1822 and 1844. The signature of the elector was permissible in Indiana[5] from 1867 to 1881.

7. THE DEFECTS OF THE UNOFFICIAL BALLOT

While the ballot was superior to the viva voce system as a method of electing public officers, it was open to serious objections and capable of great abuse. In fact, elections in the United States thirty or forty years ago were not a very pleasant spectacle for those who believed in democratic government.

1. In the first place, the ballot was not secret. In many states there was no regulation of the form or appearance of the ballot whatsoever. As a result, the ballots of the opposing parties were so different that it could be accurately told how an elector voted by the color of his ticket.

[1] Garfield and Snyder, *Compiled Laws*, 1853, ch. 14.

[2] Pennsylvania Constitution, 1873, Art. VIII, sec. 4; Colorado Constitution, 1876, Art. VII, sec. 8; Missouri Constitution, 1875, Art. VIII, sec. 3; Mansfield Digest (Arkansas), 1884, ch. 56; Alabama Code, 1877, p. 239; Georgia Code, 1861, p. 237; Texas Constitution, 1875, Art. VI, sec. 4.

[3] Art. VIII, sec. 4.

[4] Rhode Island Public Statutes (rev.), 1822, p. 95; Rhode Island Public Laws (rev.), 1844, p. 491.

[5] Davis, *Statutes* (Indiana), p. 439; Indiana Laws, 1881, ch. 47.

Even in the fifteen states that required the ballots voted to be printed on plain white paper,[1] the parties by selecting different shades of white defeated the purpose of the law. The failure of the law to secure secrecy opened the door to bribery, intimidation, and corruption.

As long as universal suffrage exists there will probably be more or less bribery of voters. It is hard, however, to imagine a system more open to corruption than the one just described. The ballots were not only distinguishable, but the briber was permitted to have full view of the voter's ticket from the time it was given to him until it was dropped in the ballot box. Money, or "soap," as it was called, with increasing frequency was used to carry elections after the Civil War. Moreover, the buying of votes was not confined by any means to the city, but was freely used in the country as well. One writer described the conditions as follows:

> This sounds like exaggeration, but it is truth; and these are facts so notorious that no one acquainted with the conduct of recent elections now attempts a denial—that the raising of colossal sums for the purpose of bribery has been rewarded by promotion to the highest offices in the government; that systematic organization for the purchase of votes, individually and in blocks, at the polls has become a recognized factor in the machinery of parties; that the number of voters who demand money compensation for their ballots has grown greater with each recurring election; . . . . men of standing in the community have openly sold their votes at prices ranging from fifteen to thirty dollars; and that for securing the more disreputable elements—the "floaters," as they are termed—new two dollar bills have been scattered abroad with a prodigality that would seem incredible but for the magnitude of the object to be obtained.[2]

It was charged that the bribery of voters in Indiana in 1880 and 1888 was sufficient to determine the result of the election. In 1888 it was commonly reported that one item in the Republican expense account was one hundred thousand dollars paid to W. W. Dudley toward the expense of carrying Indiana by "blocks of five."[3] The use of money had indeed become a serious menace to American institutions, and was filling thoughtful citizens with disgust and anxiety. Many electors, aware that the corrupt element was large enough to be able to turn the election, held aloof altogether.

Intimidation was just as rife as bribery, and was largely traceable to the same cause—the non-secret ballot. In 1869 the committee appointed

[1] See pages 7–8.

[2] Gordon, *The Protection of the Suffrage*, p. 13.

[3] *Forum*, VII, 631.

by the English Parliament to investigate parliamentary and municipal elections, in a draft report prepared by the chairman said:

It is difficult to arrive at the truth in the matter of the allegation of intimidation of workmen by masters, of tenants by landlords, of tradesmen by customers, and of workingmen by each other. That such intimidation is not practiced in a mode capable of legal proof is evident from the rarity of cases when a return has been set aside on this ground. But that it is practiced in some slightly disguised forms, and in a manner difficult of proof before a legal tribunal, cannot be doubted.[1]

Mr. Dowse, the attorney-general for Ireland, said:

He referred to the intimidation exercised by landlords on tenants, a form of which existed in England and Scotland, as well as in Ireland, by employers on the employed, by customers on shopkeepers. He had known instances of intimidation by a shopkeeper on a customer, by a lawyer on a client, by a doctor on a patient, and by a patient on a doctor. He had known half a congregation leave their parson and set up another place of worship on account of his vote, thus depriving him of a considerable part of his income.[2]

Mr. Terrel, of Exeter, in his testimony said "that at the Tory committee room at Exeter, it was a common question in going over the list of voters, 'Who can influence this man? and Who can lay the screw on that one?' "[3]

Probably intimidation was not as widespread in the United States as in England prior to the adoption of the Australian ballot act: but that it was extensively practiced, particularly by employers, cannot be doubted. According to a report of a committee of the Forty-sixth Congress,[4] men were frequently marched or carried to the polls in their employers' carriages. They were then supplied with ballots, and frequently compelled to hold their hands up with their ballots in them so they could easily be watched until the ballots were dropped into the box. Many labor men were afraid to vote and remained away from the polls. Others who voted against their employers' wishes frequently lost their jobs. If the employee lived in a factory town, he probably lived in a tenement owned by the company, and possibly his wife and children worked in the mill. If he voted against the wishes of the mill-owners, he and his family were thrown out of the mill, out of the tenement, and

[1] *Parliamentary Papers*, VIII, p. xvii.

[2] *Hansard Parliamentary Debates*, CCIX, 484.

[3] *Westminster Review*, XXV, 501–2.

[4] Forty-sixth Congress, second session, Senate Report 497, pp. 9–18; see also *Nashville American*, November 9, 1889.

out of the means of earning a livelihood. Frequently the owner and the manager of the mill stood at the entrance of the polling-place and closely observed the employees while they voted.[1] In this condition, it cannot be said that the workingmen exercised any real choice. The need of a secret ballot to protect debtors and the laboring class was especially urgent.

A third consequence of the non-secret ballot was the opportunity it gave for fraud, particularly the stuffing of the ballot box. By this the writer does not mean to imply that it was responsible for such frauds as the false-bottom ballot box, but the failure to provide an official ballot gave a great opportunity for an elector to deposit more than one ballot. This was particularly true of the thin or tissue-paper ticket, where one or two smaller ballots could be folded inside a larger one without an outsider being able to tell that there was more than one ticket being deposited.[2] Yet the inside ballot could be so folded that it would fall out if the outer ballot was shaken a little when it was being voted, or if a friendly judge would materially assist by shaking the box, before it was opened to count the votes.

This evil was recognized, and it was commonly provided that ballots found folded or rolled together should not be counted. Since skilful manipulation could separate these double votes, it was generally required by statute that, "If after having opened or canvassed the ballots, it shall be found that the whole number of them exceeds the whole number of

[1] This policy of intimidation is well stated in an article which appeared in the *Boston Herald:* "There will be a good deal of 'bull-dozing' down in Massachusetts this year of a civilized type. The laborers employed by General Butler in his various enterprises—mills, quarries, etc.—will be expected to vote for him or to give up their situations. The same rule will hold good on the other side. There will be no shot-guns or threats. Everything will be managed with decorum, adorned with noble sentiments. But the men who oppose Butler employ three-fourths, if not seven-eighths, of the laborers of the state. They honestly believe that Butler's election would injure their property. They know that idle hands are waiting to do their work. It is not to be expected that they will look on indifferently and see their employees vote for a destructive like Butler. Human nature is much the same in Massachusetts and Mississippi. Only methods are different. Brains, capital, and enterprise will tell in any community. It is very improper to intimidate voters, but there is a way of giving advice that is most convincing" (Forty-sixth Congress, second session, Senate Report 497, pp. 2–3).

[2] Almost all the contested elections during this time bear witness to this abuse. In the case of *Mackey* v. *O'Connor* (Forty-seventh Congress, first session, *Congressional Record*, XIII, No. 5, p. 4334) tables were submitted showing that in the Second Congressional District in South Carolina there were 36,248 persons who voted and 42,537 ballots were found in the boxes at the close of the election.

them entered on the poll lists, the inspector shall return all the ballots into the box, and shall thoroughly mingle the same; and one of the inspectors, to be designated by the board, shall publicly draw out of such box, without seeing the ballots contained therein, so many of such ballots as shall be equal to the excess, which shall be forthwith destroyed."[1] In drawing out the excess number, there was opportunity for corruption and narrow partisanship, and many charges were made of gross discrimination against certain parties.

2. The second great defect of the old system was that it was nobody's business to furnish correct ballots to the voter. The furnishing of ballots was left to publicly irresponsible party committees. This gave the committee or party leaders almost complete control of the situation. They could have neglected to print any tickets, have failed to distribute, or have destroyed the tickets without incurring any legal penalty, although such action would have virtually meant no election. They could remove or "unbunch" the ticket of any particular candidate, and insert in its place anyone they desired, knowing that many times the ticket would be voted as made up. This was due in part to the indifference of the elector, but not always. Receiving it from an agent of his party, he felt confident that it was all right. But this confidence was often abused. In 1882 the Republican machine sent out the tickets of the Democratic candidate for mayor.[2] In November, 1888, in many election districts in New York City the Tammany and Republican tickets were the same: Harrison electors, Hill for governor, and Grant for mayor.[3] Moreover, the opposing parties imitated each other's tickets so as to deceive the voter. A facsimile of the opposition ticket would be prepared, containing, however, all or a part of the candidates of another party. Sometimes this counterfeiting was so skilfully done as to deceive even the cautious elector.

3. The expense of printing and distributing the tickets, manning the polls, and supplying booths constituted another evil of the unofficial ballot system. Mr. Ivins estimated that in the city of New York the entire printing bills of each of the three organizations for all purposes was not less than $25,000. Allan Campbell in his campaign against Franklin Edson in 1882 spent about $25,000 for manning the polls and supplying booths, $10,000 for printing the tickets, and $8,000 for their distribution, besides other expenses of the campaign.[4]

[1] *Birdseye R.S.* (New York), I, 936. [2] Ivins, *Machine Politics*, p. 23.

[3] *Lippincott's*, XLIX, 385; *Political Science Quarterly*, IV, 136.

[4] Ivins, *Machine Politics*, p. 59.

Although the expense of providing ballots and their distribution, and other legitimate demands were heavy, they constituted only a small part of the actual expense of the campaign. Making the necessary expenditures the excuse for raising money, large sums were collected, much of which was spent in political debauchery.

While these contributions came from various sources, a heavy assessment was laid on the candidates. According to Mr. Ivins, candidates for Congress were called upon to pay from fifteen to twenty dollars per election district, while the average contributions for the superior and common pleas benches was from $10,000 to $15,000.[1] This was simply bargain and sale. It practically meant that only the rich or those willing to use their positions for partisan purposes were able to obtain offices. The honest citizen of moderate wealth was excluded; and independent and non-partisan movements in politics were prevented because of the prohibitory expenses of conducting a campaign.

4. A fourth defect of the old régime was its failure to supply any adequate method of acquainting the public with the names of the men they would be called upon to vote for sufficiently in advance of the election to secure an examination into their qualifications. Nominations of corrupt or inefficient men were many times made too late for a public exposure, so the electorate went to the polls relying only on the honesty of their party, which many times betrayed them.

5. A serious drawback to elections in the old days was the noise, violence, and confusion about the polls. Four years after the passage of the famous reform act of 1832, the *Westminster Review* gave the following picture of elections in England:

> The experience of being endowed with ears and eyes, who has lived in the scene of a contest, be it in town or country, can bear witness to the terrors of this visitation. If some return could be made of the number of families ruined at the last election on account of obnoxious votes, and of those who, to avoid ruin, were compelled to sacrifice their integrity; of the number of divisions among friends, occasioned by difference of partisanship; of the panes of glass, and heads, that were broken by the glorious mob; in short of every injustice, outrage, or crime committed within that short period—we should be able to appreciate the blessings of our present electoral system.[2]

As a general rule the elections in America were not so riotous as those just described, although our contests for elective office were very

[1] *Ibid.*, pp. 55–56.

[2] *Westminster Review*, XXV, 487–88.

disorderly. Sham battles were frequently engaged in to keep away elderly and timid voters of the opposition.[1] Many electors had their coats torn from their backs, ballots snatched from their hands and others put in their place, with threats against using any ballot except the one substituted.[2]

By the close of the second decade following the Civil War the ballot had been adopted in every state except Kentucky. In all the states the ballots were unofficial, although some progress had been made toward an official ballot. Fifteen states provided that the ballot should be printed on plain white paper. Two states required the ballot to be printed on paper furnished by a state official. Five states regulated the size of the tickets. The system was, however, very defective. It had failed to secure an honest vote, or a true expression of the public will. The defects were: first, it was not secret; secondly, there was no means provided by law for the printing and distribution of the ballots; thirdly, there was no means provided for protecting the public against eleventh-hour nominations, which made a public exposure of the candidates impossible; fourthly, the necessarily large expense deterred independent and non-partisan candidates; fifthly, the noise, violence, and confusion about the polls were disagreeable. There was need of a system of voting which would obviate or diminish these evils.

[1] *North American Review*, CXV, 628–29.

[2] *Annals of the American Academy of Political and Social Science*, II, 738.

CHAPTER II

THE ORIGIN OF THE AUSTRALIAN BALLOT SYSTEM AND ITS INTRODUCTION INTO THE UNITED STATES

1. THE ORIGIN OF THE AUSTRALIAN BALLOT

As its name implies, this system originated in Australia. The population of this land in the first half of the nineteenth century included many gold-seekers, bent upon gain, and a large class of criminals. In this environment the vices of the viva voce method flourished even more than in England. Mr. Francis S. Dutton in his testimony before the Marquis of Hartington committee in 1869 said: "Before the ballot was in operation our elections were exceedingly riotous. Of course our community had the rowdy elements as well as other countries, and on election days these troublesome elements came to the surface; and I have been in the balcony of an hotel during one of the city elections, when the raging mobs down in the street were so violent that I certainly would not have risked my life to have crossed the street."[1]

Many men in Australia saw the dangers of open voting, and began to work to secure a remedy. The secret ballot was first proposed by Francis S. Dutton in the Legislative Council of South Australia in 1851. For several years no action was taken, but in 1857 Mr. Dutton became a member of the government, and made excellent use of his opportunity to advance his measure. A bill embodying this plan was introduced, and, after some modification in the House, became a law in 1857–58.[2] In Victoria the secret ballot was championed by Mr. William Nicholson, who, at the head of the government, secured the enactment of the law in 1856. The system spread very rapidly. It was adopted by Tasmania and New South Wales in 1858; New Zealand in 1870; Queensland in 1874; and West Australia in 1877.[3]

In England, where the viva voce method was in use with all its attending vices, the secret ballot had been agitated continually since 1830.[4] In that year it was proposed by O'Connell and received the

[1] *Parliamentary Papers*, VIII (1868–69), p. 358.

[2] Wigmore, *Australian Ballot System*, pp. 2–5; see Appendix A.

[3] Wigmore, *ibid.*, pp. 7–8.

[4] The earliest proposal of the ballot in Parliament was in 1710 (E. L. Pierce, *Tracts on the Ballot*, article on "Secret Suffrage").

support of twenty-one members. The ballot formed a part of the reform bill as reported to the Cabinet by Lord John Russell, Sir James Graham, and others, but it was not included in the act as presented to Parliament. During the next three years many petitions for the measure were presented to Parliament and debated. On April 23, 1833, George Grote brought forward a resolution affirming the expediency of its adoption, and until 1840 this was yearly presented and affirmed by Mr. Grote. After the retirement of Grote, Mr. Ward and later Mr. H. Berkley became the champions of the measure. It was supported by such statesmen as Macaulay, Bright, Cobbett, Hume, and O'Connell, and was opposed by Lord Derby, the Duke of Wellington, and Lord Palmerston. Although this movement was retarded by the revolution of 1848 and the opposition of John Stuart Mill, the long period of agitation finally bore fruit. In the Queen's speech from the throne in 1868–69, a recommendation was made that the present mode of conduting elections be inquired into and further guaranties adopted for promoting their tranquillity, purity, and freedom.[1] A committee of twenty-three, with the Marquis of Hartington as chairman, was appointed. This committee not only examined the English situation, but questioned witnesses from France, Italy, Greece, the United States, and Australia; and in 1870 it recommended that the secret ballot be adopted. The result was the ballot act which became a law in 1872.[2] With the prestige gained by its success in England, the principles of the Australian ballot were soon adopted in Canada, Belgium, Luxembourg, and Italy.[3]

2. ITS INTRODUCTION INTO THE UNITED STATES

At first this new reform in Australia and England does not appear to have created much of an impression in this country. According to Mr. John S. Wigmore, it was first advocated by a member of the Philadelphia Civil Service Reform Association in 1882 in a pamphlet called *English Elections*.[4] The following year Henry George in the *North American Review* advocated the adoption of the English system as a cure for the vices arising from the use of money in elections.[5]

The first attempt that the writer could discover to secure the passage of the reform was made in Michigan in 1885. A bill modeled on the Australian act was introduced into the lower house of the legislature by Mr. George W. Walthew, but it failed to pass. A bill similar to that

[1] *Hansard Parliamentary Debates*, CXCIV, 25.
[2] 35–36 *Victoria*, ch. 33.
[3] Wigmore, *op. cit.*, pp. 16–23.
[4] Wigmore, *op. cit.*, p. 23.
[5] Henry George, "Money in Elections," *North American Review*, CXXXVI, 201.

of Mr. Walthew's, advocated by Mr. Judson Grenell, passed the House in 1887, but was lost in the Senate. In Wisconsin a compromise measure applying to cities of fifty thousand or over was adopted in 1887.[1] Under this law the party organizations printed the ballots and the state distributed them.[2]

But the honor of enacting the first Australian-ballot law belongs to Kentucky. This measure was introduced by Mr. A. M. Wallace, of Louisville, and was enacted February 24, 1888.[3] The act applied only to the city of Louisville, because the state constitution required viva voce voting at state elections. The ballots were printed by the mayor at the expense of the city. Candidates had to be nominated by fifty or more voters in order to have their names placed upon the ballot. The blanket form of the ballot was provided, with the names of the candidates arranged in alphabetical order according to surnames, but without party designations of any kind. The manner of obtaining and marking the ballots was the same as the Massachusetts act herein described.

The original centers of organized agitation for the reform were New York and Boston, and the two movements, while simultaneous, were independent. In Boston the earliest discussion and demand for ballot reform grew out of the discussions of public questions by the members of a club called the "Dutch Treat." Later the Boston City Council and the labor organizations began to demand reform. One of the members of the "Dutch Treat," Mr. H. H. Sprague, was elected to the state Senate and was made chairman of a committee on election law. Encouraged by these favorable signs, the club drafted a bill which was presented by Mr. Sprague. Another bill was presented in the House by Mr. E. B. Hayes, of Lynn. Mr. Hayes lent his support to the bill introduced by Mr. Sprague, a large number of petitions for the bill were received, and on May 29, 1888, the law was enacted.[4]

In New York a systematic discussion began in 1887 in the Commonwealth Club.[5] After a thorough discussion of this reform, a committee was appointed composed of some of the leading laywers and men of legislative and administrative experience, taken equally from the Republican and Democratic parties. This committee was subsequently joined by a like committee from the City Reform Club; and after some

[1] *Nation*, XLIV, 359; Wigmore, *Australian Ballot System*, pp. 23–24.

[2] *Political Science Quarterly*, IV, 143.

[3] Kentucky Laws, 1888, ch. 266.

[4] *Annals of the American Academy of Political and Social Sciences*, pp. 735–36.

[5] Ivins, *On the Electoral System of the State of New York*, p. 24.

months of study, it drafted an act which, after having been approved by the Commonwealth Club, the Reform Club, the City Reform Club, and the Single Tax party, was presented in the Assembly of 1888 and was known as the "Yates bill." The bill[1] was referred to the Committee on Judiciary and was amended by certain provisions taken from similar bills introduced by Mr. Saxton and Mr. Hamilton. The measure was supported by the Republicans and passed both houses of the legislature, but was vetoed by Governor Hill. Agitation was started anew by its friends and a ballot league was formed.[2] In the session of the legislature of 1889 the Saxton bill was amended and again introduced, the bill as amended having received the indorsement of a committee of the Young Men's Democratic Club of New York. The legislature again passed the Saxton bill and it was vetoed a second time by Governor Hill. In 1890 the Yates-Saxton bill with some modifications was again introduced, and a monster petition from New York City containing over one hundred thousand signatures was presented to the legislature. Governor Hill saw that something had to be done, so he expressed a willingness to sign a bill looking to the improvement of the election laws, but declared that under no circumstance would he approve any bill following the Massachusetts or the Australian system.[3] Certain of the leaders, despairing of the adoption of their reform, decided to accept the governor's overtures. The result was the unsatisfactory compromise law of 1890 which provided for the so-called "party and paster ballot."

The rapidity of the spread of the Australian ballot in the United States during the next few years was most gratifying to its friends, but its triumph was not secured without a hard struggle. The opposition came from two sources: the ultra-conservative members of the community, and the machine politicians, who profited by the vices of the old system. The *New York Herald*, in an editorial, said: "The only persons who can have an interest in elections as they are, are the leaders and managers, whose power depends upon their successes in manipulating the ballot so that the suffrage will express, not the will of the people, but the success of their schemes."[4] As Mr. Wigmore shows in his summary

[1] Ivins, *On the Electoral System of the State of New York*, p. 24.

[2] *Electoral Reform*, with the Massachusetts Ballot-Reform Act, pp. 15–16.

[3] Ivins, *On the Electoral System of the State of New York*, pp. 26–27.

[4] *New York Herald*, editorial, May 11, 1888; *Harper's Weekly*, XXXIII, 851. "This goes far towards explaining the opposition of the Democratic members of the legislature to the Saxton bill, for they were for the most part small city politicians who owe their chances in politics to the methods which that bill was intended to destroy" (*New York Times*, editorial, May 18, 1888).

of party votes,[1] the success of the measure in the country as a whole cannot be claimed by either of the two great political parties, and its enemies were also bipartisan.

3. THE ARGUMENTS FOR AND AGAINST THE AUSTRALIAN BALLOT

Following the success of the Australian ballot in Massachusetts, a general agitation for the reform took place, and its friends found the ground well prepared. The period of corruption had created a favorable attitude on the part of a majority of the voters toward any system of reform, although there was some difference of opinion as to the proper remedy.

In favor of the Australian ballot it was urged:

First, that it would diminish or prevent the growing evil of bribery by removing the knowledge of whether it had been successful. "The buyer can keep track of the voter under the old law, and see that he actually deposits the identical ballot he gives him, and, as a matter of fact, the utmost vigilance is maintained in all such cases by the investor. He knows that a man so low as to sell his vote would not hesitate to break his word and cheat the purchaser."[2] Under the secret ballot this ocular proof cannot be obtained; and it was asserted that no man would buy a commodity when he could not know if it had been delivered.[3] This was one of the strongest arguments advanced by the supporters of ballot reform. Its enemies denied, however, that the official ballot would remove bribery. Governor Hill argued that it would make bribery easier. He said that the provision of the law requiring the judges of elections to place their initials on the back of the ballots would, with the collusion of officials, make the identification of bribed votes even more certain. He maintained also that there would be a widespread bribery of ballot clerks and inspectors, because it would be easier, safer, and would require less money to corrupt them than to bribe so many electors.[4]

[1] Wigmore, *Australian Ballot System*, p. 205.

[2] *Chicago Inter Ocean*, editorial, June 12, 1891.

[3] "It will put an end to the practice of vote selling, for nobody will buy a commodity when he was unable to know whether it had been delivered."—*Chicago Tribune*, editorial, June 11, 1891. *Political Science Quarterly*, IV, 137. See also *New York Times*, editorial, May 3, 1888; *New York Herald*, editorial, May 14, 1889; Post, *Australian System of Voting*, p. 5; Kentucky Constitutional Convention, 1890, II, 2025; *Common Council* v. *Rush*, 82 Mich. 532.

[4] *New York Herald*, "Veto Message of Governor Hill," May 14, 1889.

In England where the issue was between the official ballot and the viva voce method, it was argued that the secret ballot would increase bribery by hiding it from

Another argument strongly urged in favor of the reform was that it would protect the weak and dependent against intimidation and coercion by employers and creditors. The *New York Times* stated this argument: "It [the unofficial ballot] also gives a chance for coercion and intimidation of such voters as are in a position of more or less dependence, and makes the secrecy of the ballot impossible for a large proportion of the electors. The bill [Yates's] is intended to do away with all these evils and corruptions."[1] This point was not squarely met by the opposition. They tried to dodge the issue either by claiming that the amount of intimidation was small and diminishing, or by declaring that the economic conditions in the particular state made such protection unnecessary.[2]

Thirdly, the Australian-ballot law would place upon designated officials the duty of furnishing correct ballots to the electors at the expense of the state. This would stop the abuses springing from the private printing of ballots. It would prevent the assessment of candidates, and do away with the excuse for raising such great sums of money.[3]

the spotlight of public criticism. Lord Claud Hamilton stated this argument: "If in a free country public opinion could not raise the moral tone of the constituencies and lead them to look with scorn on the demoralizing and disgraceful practice of corruption, it was hopeless to expect that good would be effected by the adoption of a secret system. Nothing was supposed to prevent misconduct and robbery at night so effectually as gas lamps" (*Hansard Parliamentary Debates*, CXCIV, 1505).

[1] *New York Times*, editorial, May 24, 1888. Words in brackets are my own. See also *New York Herald*, editorial, May 25, 1888; *North American Review*, CXLIII, 632; Post, *Australian System of Voting*, p. 5; Kentucky Constitutional Convention, 1890, II, 1814–21, 1898, 2034.

[2] Kentucky Constitutional Convention, 1890, II 2002.

[3] Post, *Australian System of Voting*, pp. 2–3. Mr. Ivins (*Machine Politics*, pp. 86–87) thus summarizes the evil and the remedy:

The Evil	The Remedy
1. The necessity for voluntary printing and distributing the ballot justifies organizations for this purpose.	1. The printing and distributing of all ballots at public expense does away with the necessity of organization for this purpose.
2. It practically vests the "machines" with the monopoly of the election machinery.	2. And will deprive the political machines of the monopoly of an essential part of the election machinery.
3. And, as a consequence, with the monopoly of nomination.	3. It will enable any body of citizens of the number prescribed by law to have the name of their candidate printed on the same ballot with the names of all other candidates for the same office, so that before the law and before the voters all candidates and all party organizations will stand on a perfectly even footing.
4. It involves the necessity of defraying the expenses of both printing and distribution by means of assessments on or contributions by candidates, office-holders or party leaders.	4. This will dispense altogether with the necessity of, and excuse for, levying political assessments.

[Note continued on p. 23]

It would give independent and non-partisan movements a better chance, where formerly they were deterred by the almost prohibitory expense.[1] It would banish the ticket peddler from the polls and free the public from this great nuisance.[2] It would guarantee correct ballots to the electors,[3] and would make a candidate secure on the ticket. He could no longer be "traded off," "sold out," or "unbunched."[4]

Fourthly, it would soften the influence of political contests and create order and decency at the polls. Mr. Dutton after speaking of the disorder and violence of the old system in Australia said: "That was with open voting; but now all has disappeared. By the operation of the ballot the elections are conducted quietly; and as far as rioting is concerned, every vestige of it has disappeared."[5] Mr. Dana in discussing the Massachusetts law of 1888 said: "Quiet, order, and cleanliness reign in and about the polling-places. I have visited precincts where, under the old system, coats were torn off the backs of voters, where ballots of one kind have been snatched from voters' hands and others put in their places, with threats against using any but the substituted ballots; and under the new system all was orderly and peaceable. Indeed, the self-respect in voting under the new system is alone worth all the extra expense to the state."[6]

[Note continued from p. 22]

The Evil	The Remedy
5. Which facilitates bribery and corruption by affording them convenient covers.	5. And leave no legal cover for bribery. The law can describe and limit all permissible expenditures, and compel the candidate or his agent to make a sworn return with vouchers to a proper public officer for all disbursements. It may punish all violations with sufficiently severe penalties.
6. And debauches the electors by leading them to become partisans for pay instead of honestly performing their duty as citizens.	6. And prescribes that no elector under pay of a party or candidate shall be permitted to vote, thus making it more the interest of candidates and parties not to pay than to pay for election services, and thus deterring all honest electors from accepting pay.

[1] *Lippincott's*, XLIV, 386; *Political Science Quarterly*, IV, 140; Post, *Australian System of Voting*, pp. 2–3.

[2] "The professional ticket peddlers will now disappear from politics. That had come to be a great nuisance to the public and expense to the candidates. It was disagreeable to be compelled in going to the polls to run the gantlet of a string of hired heelers, armed with packages of money; and their employment cost a great deal of money.—*Chicago Inter Ocean*, editorial, June 12, 1891. See also *New York Times*, editorial, March 27, 1888; *Chicago Tribune*, editorial, June 11, 1891; *Scribner's*, III, 194.

[3] Post, *Election Reform*, p. 7.

[4] *Lippincott's*, XLIV, 385.

[5] *Parliamentary Papers*, VIII, 358.

[6] *Annals of the American Academy of Political and Social Science*, II, 738.

Fifthly, it would raise the tone of political life by teaching that a vote was a privilege and not an article of merchandise, and would give to the voter a sense of responsibility.[1]

The arguments used in the United States against this "penal-colony reform" or "kangaroo voting," as the Australian ballot was dubbed, were:

First, that the exclusively official ballot destroys the "vest-pocket" vote which thousands of citizens have always thoughtfully and carefully prepared in advance of the election, and the prohibition of these will result in hurried and incomplete preparation within the booths.[2] The friends of the law responded that the Australian ballot preserved and enlarged the point of value in the "vest-pocket" vote. "The 'vest-pocket' vote which has grown out of this mailing of ballots and pasters will be impossible under the new law, or, rather, the spirit of that vote will be the life-principle, the vital spark, of the entire election system under the new act. The 'vest pocket' has now been enlarged and transformed into the election booth."[3]

Secondly, the Australian ballot destroys individuality in presenting candidates and limits the choice to nominees of parties; and discriminates against those whose names are not thus advertised or printed upon the ballot. Governor Hill in his veto of the Saxton bill said:

> I am unalterably opposed to any system of elections which will prevent the people from putting candidates in nomination at any time and voting for them by a printed ballot up to the very last moment before the closing of the polls on election day. This is an inherent right under our free institutions, which the people will never knowingly surrender. . . . .[4]
>
> The right of suffrage and the existence of elections are both made absolutely dependent [by the Saxton bill] upon previous nominations. If no such nominations should be made, all the people of the state would be disfranchised. It is not enough to say that such event is not likely to happen. A bill which makes the right to vote depend upon irresponsible voluntary bodies, thereby making the disfranchisement of all the people possible, is equally unconstitutional whether such event be probable or not. This result proceeds not from special defects in this particular bill, but is inherent in the very theory of an exclusive official ballot upon which the bill is framed.[4]

This argument was met with the statement that the bill, instead of hindering the voter in canvassing the merits of candidates or presenting

[1] *Lippincott's*, XLIV, 385; Kentucky Constitutional Convention, 1890, II, 1999.

[2] *Forum*, VII, 629. [3] *Chicago Inter Ocean*, editorial, June 12, 1891.

[4] Veto message of Governor Hill, 1889. Editorials in the *New York Sun*, May 14, 1889, and May 23 and May 26, 1888.

any person he pleases, makes these rights more secure. The first is secured by officially publishing the names of all candidates in advance of the election, and the second by allowing the voter to reject all the names on the ballot and to insert the names of any candidates he pleases. As to the alleged discrimination against unnominated candidates, it was argued that it was not constitutionally necessary to preserve the individual liberty of nomination; and "when official nominations may be made by so small a number of voters as this bill requires, discriminations like these against a candidate who has not been nominated cannot be seriously regarded as unjust or impolitic, even if it were constitutionally necessary to preserve individual liberty of nomination."[1]

Thirdly, the Australian ballot is too complex, cumbersome, and impractical, and surrounds the voter with restrictions which practical experiment has shown to be unnecessary. The *New York Sun* declared that the law was not electoral reform but electoral repression:

> The great pledge for the security of popular institutions in this country is universal manhood suffrage. Whatever tends to increase the number of legal voters and to make citizens more active participants in the affairs of government is wise and salutary. Whatever tends to impair or restrict the right of franchise, to limit the number of voters, or to vex or harass them in the exercise of this most important duty is pernicious and dangerous.
>
> The Saxton bill would make it harder for the citizen to vote. That is its aim. Its tendency is to gradual disfranchisement.[2]

Fourthly, it would take too long to mark the ballots, particularly in crowded precincts, if the electors could mark their ballots only within the voting-place. To overcome the strength of this argument booths were placed on the streets of Boston and records were kept of the time required for voting.[3]

Fifthly, the opponents of the Australian ballot raised the ever-popular cry of public economy by arguing that the printing and the distribution of all ballots by the state would be an enormous expense to the state.[4]

Sixthly, it was argued that the provision that only official ballots could be used, and that these must be obtained only from the ballot

[1] Post, *Election Reform*, p. 6.

[2] *New York Sun*, editorial, May 12, 1889; see also editorials of May 23, 1888; *Nation*, XLIV, 490; *New York Times*, editorial, May 15, 1888; Kentucky Constitutional Convention, 1890, II, 2005.

[3] Statement of Mr. John Wigmore.

[4] Veto message of Governor Hill, *New York Herald*, May 14, 1889; see also *Atlanta* (Ga.) *Chronicle*, November 9, 1889.

clerks, gave the officers "an absolute control of the result of any and every election, for only such ballots as these clerks choose to deliver to voters can be cast or counted."[1] Governor Hill declared that he was willing to have the state print official ballots in order to guarantee a sufficient supply for the convenience of electors, but he declared that "that power should be concurrent with parties, candidates, and individuals." To the argument that the law would enable election officers, by neglecting their duty, to disfranchise the electors, it was responded that it was no defense to a law to argue that officers might be guilty of misfeasance or nonfeasance. If they are guilty, they may be punished in damages and also as criminals.[2]

Seventhly, Governor Hill claimed that the proposed law was unconstitutional on the following grounds: (*a*) "that it embarrasses, hinders, and impedes electors in exercising their constitutional right of suffrage"; (*b*) that for the blind and illiterate voters "it destroys the secrecy of the ballot by compelling an avowal of their votes as a condition of exercising the right."[3]

[1] *New York Herald*, May 14, 1889. [2] Post, *Election Reform*, p. 7.

[3] For an able answer to Governor Hill's objections, see L. F. Post, *Election Reform*, a pamphlet in the University of Chicago library. A discussion of the constitutionality of these points will be given in chapter vi. Governor Hill's message is discussed from his own point of view in the *New York Sun* for May 23, 1888.

CHAPTER III

THE DEVELOPMENT OF THE AUSTRALIAN BALLOT IN THE UNITED STATES

INTRODUCTORY

The movement for reform, which reaped its first fruits of victory in Louisville and Massachusetts, received great impetus by the unprecedented use of money in the election of 1888. The effect is easily seen in the record of legislation of the next four years. In 1889 seven states enacted reform laws based on the Australian ballot.[1] In the legislative sessions of the following year five states and one territory placed this law on their statute books.[2] Before the presidential election in 1892 thirty-two states and two territories had provided for the Australian ballot; and by 1896 seven other states were added to this list. In 1897 Missouri abandoned in part the Australian ballot, and adopted separate party ballots.[3] This is the only state which has given up the blanket form of the ballot after once adopting it. By 1916 Georgia and South Carolina remain the only states entirely unreformed. North Carolina has only a local act applying to New Hanover County.[4] New Mexico has a very unsatisfactory compromise law under which separate ballots are printed by the county recorders under the supervision of the chairmen of the county committees of each party; and the ballots are distributed by the parties in advance of the election.[5] Tennessee has applied the Australian-ballot law only to counties having fifty thousand population or over,[6] and to towns having a population of twenty-five hundred or more.[7] Missouri has all the features of the Australian ballot except that it has separate party ballots.[8] Delaware has taken a very reactionary step by permitting an elector to obtain a ballot in advance of the election from the chairmen of the various political

[1] Indiana, Minnesota, Missouri, Montana, Rhode Island, Wisconsin, and Tennessee for a part of the state.

[2] Maryland, Mississippi, Oklahoma, Vermont, Washington, and Wyoming.

[3] Missouri Laws, 1897, p. 107.

[4] North Carolina Laws, 1909, ch. 867.

[5] New Mexico, 1905, ch. 127.

[6] Tennessee, 1891, ch. 225.

[7] Tennessee, 1897, ch. 17. By special acts three other counties are also included.

[8] In 1913 the Missouri legislature passed an act providing for the blanket type, but because of constitutional objections the law was not put into effect.

organizations, and she has also introduced an element of danger by the use of envelopes.[1]

The important features of the Australian ballot may be discussed under the following heads: first, the printing and distribution of the ballots; secondly, the procedure for placing the names of candidates on the ballot; thirdly, the provisions for publicity; fourthly, the arrangement of the polling-place; fifthly, the form of the ballot; sixthly, the preparation of the ballot.

I. THE PRINTING AND DISTRIBUTION OF THE BALLOTS

In every state which has adopted the Australian system, the ballots are printed and distributed at public expense. The use of any ballot other than the official ballot is generally forbidden, but even where the statute is silent the use of such unofficial ballots would probably be held illegal.

In all of the eastern states except Connecticut, ballots for the election of municipal officers are prepared by the clerk of the city or town at the expense of the municipality. In Connecticut the secretary of the commonwealth provides the ballots for the city, town, or borough elections at the expense of the city, town, or borough for which the ballots are prepared.[2] For all officers other than municipal these states divide into two distinct groups. In the New England states the preparation of the ballots is done by the secretary of state, and the cost of printing the ballots and their delivery to the towns is borne by the state.[3] In the middle eastern states the ballots are made up and printed under the direction of some county officer, usually the county clerk, and the expense of their printing and distribution is a county charge.

The number of ballots required varies greatly. Usually the law states that one hundred ballots shall be furnished for every fifty voters, or fraction of fifty, in each precinct. These ballots are sealed in packages and delivered to some local officer, usually the town or city clerk, at a certain time in advance of the election, and are sent to each polling-place on the day of election a short time before the opening of the polls. If the ballots are not received, or if, after being received, they are destroyed or stolen, Massachusetts, New Hampshire, Rhode Island, and New York make it the duty of the town or city clerk to prepare substitute ballots. In Vermont this duty is incumbent on the presiding election officer, and in West Virginia on the ballot commissioners. Massa-

[1] Delaware Laws, 1913, title 4, ch. 65. [2] Connecticut, 1909, ch. 250.

[3] Until 1912 the ballots in Vermont were prepared by the county clerks.

chusetts, New Hampshire, and Rhode Island require two sets of ballots to be prepared, and one set is held in reserve for an emergency.

In the north central states, with the exception of Indiana and Minnesota, the ballots are prepared and distributed by county and municipal officers. Minnesota and Indiana require all ballots for officers to be voted on by all the electors of the state to be furnished by central state officers.[1] The provisions of the law as to the number of ballots to be furnished each precinct, their distribution, and the procedure in case of their loss is the same as in the eastern states.

Of the southern states, Louisiana places the duty of furnishing ballots on the secretary of state, but elsewhere it is imposed on county and municipal officers.[2] Oklahoma is the only western state to depart from this rule by providing that state and county election boards shall furnish all ballots.[3]

The furnishing of the proper number of correct ballots is not only a ministerial act enforceable through mandamus, but severe penalties are imposed for the non-performance of such duty. This is a great advance over the old régime, where no person was obligated to supply correct ballots to the electors.

2. THE PROCEDURE FOR PLACING THE NAMES OF CANDIDATES ON THE BALLOT

Since it is impossible to print the name of every possible candidate on the ballot, the law restricts the nomination of candidates whose names are to be printed on the ballot to the nominees of political parties of a certain size and to independent candidates petitioned for by a certain number of electors.

All the states depart from the original Australian ballot act, and recognize the right of political parties to make nominations to public office. What constitutes a political party legally competent to nominate varies from state to state. Eight states[4] recognize as competent a party polling 1 per cent of the total vote cast in the state, electoral district or division thereof, or city for which the nomination is made. Colorado places the number at 10 per cent of the total vote in the state or division thereof.[5] Massachusetts requires the political party to poll, at the

[1] Minnesota, 1889, ch. 3; Indiana R.S., 1914, No. 6897.

[2] Louisiana, 1896, No. 137.

[3] Snyder, *Compiled Laws* (Oklahoma), 1909, secs. 3156–57.

[4] Maine, Vermont, Indiana, Ohio, Maryland, Kansas, Arizona, and Minnesota.

[5] Colorado, 1891, pp. 143–44.

last preceding five elections, a number equal to the number required to nominate by petition a candidate for the office in question,[1] while New York and Texas demand that the political party cast 10,000 votes for its candidate for the office of governor at the last preceding election.[2] On the other hand, a number of states, as Connecticut or Arkansas, do not define a political party at all.

Before the introduction of the mandatory direct primary, a political party could generally nominate by one of several recognized ways. The provisions of the Illinois law of 1891 are typical of a large majority of the states. This statute provided that candidates could be nominated by a convention of delegates, a caucus, or a meeting of qualified voters representing a political party which at the last preceding election cast 2 per cent of the entire vote in the state, or in the electoral district or division or municipality for which the nomination is made.[3] Since 1900 the direct primary has in many states superseded the caucus or convention, and the latter exists in such states, if at all, only as supplemental to the primary law.

All but four states, Connecticut, Delaware, Michigan, and New Mexico, allow candidates to be nominated by petition of the electors.[4] This was in fact the only method provided in the Australian act. The number of petitioners deemed necessary varies, not only among the states, but from time to time within a single state. Mississippi is the most liberal of the states, requiring the petition of only fifteen electors for any beat or municipal office in a village or town containing less than three hundred inhabitants, and for any other office, fifty petitioners.[5] For any office to be voted on by all the qualified voters of the state South Dakota requires the petition of two hundred electors; Alabama, Idaho, and North Dakota require three hundred signatures; seven states require five hundred;[6] and nine states place the number at one thousand.[7] New York is the only state which requires a geographical

[1] Massachusetts Laws, 1907, ch. 560.

[2] New York, 1896, ch. 909; Texas, 1905 (special session), ch. 11.

[3] Illinois, 1891, p. 107.

[4] South Carolina, North Carolina, and Georgia are not included. In Virginia any person may become an independent candidate by notifying the proper officer of such intention in writing, attested by two witnesses.

[5] Mississippi Code, 1906, sec. 4159.

[6] Rhode Island, 1889, ch. 731; Indiana, 1889, ch. 87; Maryland, 1890, ch. 538; Florida, 1895, ch. 4328; Iowa, 1892, ch. 33; Colorado, 1891, p. 144; Utah, 1896, ch. 69.

[7] Massachusetts, 1888, ch. 436; Maine, 1891, ch. 102; New Hampshire, 1897, ch. 78; Wisconsin, 1889, ch. 248; Illinois, 1891, p. 107; Kentucky, 1892, ch. 65; Louisiana, 1896, No. 137; Nebraska, 1891, ch. 24; Washington, 1895, ch. 156.

distribution of the electors; six thousand petitioners are required to nominate, and of these fifty must be from each county.[1] Twelve states select a percentage of the total number of voters as the basis in determining the number necessary to nominate for an office voted for by all the electors of the state. Pennsylvania is the most liberal of these, selecting one-half of 1 per cent as the basis,[2] while Nevada is at the other extreme and requires 10 per cent.[3] The usual percentage demanded is either 1 or 2 per cent. Some states, as Missouri, qualify the percentage selected by the provision that the number of signatures for any office shall not be less than a certain minimum nor more than a certain maximum. For offices filled by the voters of a district less than the state, the laws in general follow the same rule as for the entire state. Frequently a fixed number will be selected for the entire state and a percentage for a district, or vice versa.

There are a number of restrictions added to the privilege of nominating by petition. The most common of these are: (*a*) The elector shall add to his signature his residence and place of business, with street and number, if any, and also the nature of his occupation.[4] (*b*) No certificate shall contain the names of more candidates for an office than there are persons to be elected to such office, and no person shall sign more than one certificate for each office.[5] (*c*) There is the implied qualification in all the laws that only qualified voters shall join in making a nomination or in signing a certificate. (*d*) Several states require a citizen to swear that he knows the contents of such petition and signs the same of his own free will,[6] and a few states require the voter to acknowledge his signature.[7] In Kentucky and Indiana the petition must recite the fact that the candidate petitioned for is qualified to hold such office, and that the subscribers desire and are qualified to vote for such candidate.[8] Texas disqualifies every person taking part in a primary from joining in the nomination by petition of a competing candidate.[9]

The names of the persons so nominated must be certified as follows: The certificate must be in writing and contain: (*a*) the name of each person nominated; (*b*) the title of the office to which he is nominated; (*c*) the name of the political party or principle such primary or convention

[1] New York, 1896, ch. 909.
[2] Pennsylvania, 1891, p. 349.
[3] Nevada, 1893, ch. 106.
[4] Pennsylvania, 1891, p. 349.
[5] New York, 1890, ch. 262.
[6] Minnesota, 1889, ch. 3.
[7] New York, 1890, ch. 262.
[8] Kentucky, 1892, ch. 65; Indiana, 1889, ch. 87.
[9] Texas, 1905, ch. 11.

(or group of petitioners) represents; (*d*) the names of candidates for president and vice-president may be added to the party appellation of presidential electors; (*e*) in the states permitting the use of party emblems a device may also be certified. The certificate must be signed by the chairman and secretary of the convention, who must add their addresses, and the contents of the certificate must be sworn to. In the case of a primary the certificate is signed by the canvassers. One of the signers of each separate "nomination paper" has to swear that the statements contained therein are true to the best of his knowledge and belief.[1]

The officer with whom the certificate shall be filed is in every state specified in the statute. The general rule is that nominations for offices to be voted for by the electors of the entire state or for a district larger than a county shall be filed with the secretary of state; for municipal offices, with the clerk of the city or town; and for all other offices, with the county clerk. These certificates must be filed in advance of the election. In Massachusetts the certificates of nomination of candidates for an office to be filled by all the voters of the commonwealth, except presidential electors, must be filled on or before the fifth Monday; and all other candidates for offices to be filed at a state election, including presidential electors, on or before the third Thursday; and nomination papers for candidates for offices filled at a state election, on or before the fourth Monday preceding the day of election. In towns, certificates of nomination for town offices must be filed on or before the second Wednesday, and nomination papers on or before the second Thursday, preceding the day of election.[2]

The requirement of filing nomination papers a certain time in advance of the election not only enables the officers charged with the printing of the ballots to do their duty, but serves notice on the public that these are the candidates for whom they will be called upon to vote. The amount of time deemed desirable varies in the respective states. There are two common principles, however: First, a longer period is required in states in which certificates are filed with the secretary of state than in those in which they are filed with a local officer. Secondly, frequently the names of candidates nominated by petition may be filed at a later date than certificates of nomination. The latter is a good provision, because it gives men dissatisfied with the party nominees time in which to combine and nominate desirable candidates by petition.

[1] Massachusetts Laws, 1888, ch. 436.

[2] Massachusetts Acts and Resolves, 1912, ch. 446.

In Connecticut, the only requirements are that parties or organizations nominate candidates at least three weeks prior to the day of election, and that the list certified by the chairman of the convention must be delivered by the chairman or secretary to the secretary of state at least eighteen days before election.[1]

Objection to the validity of certificates.—Certificates of nomination in apparent conformity to the law are considered prima facie valid unless objection in writing is filed within a certain number of days. In Ohio[2] objections must be filed within five days after the filing of the certificate of nomination. In case objections are filed, notice is at once mailed to all candidates affected. In one class of states, as Vermont, New York, and Nebraska, the officer with whom the certificate is filed passes upon the objection in the first instance, and this decision is final unless an order is obtained from a court of competent jurisdiction, or a judge thereof in vacation, before a certain date.[3] In Colorado and Utah the officer with whom the certificate is filed passes finally upon all alleged defects, and his decision must be given within forty-eight hours after the objection is filed.[4] This provision has fortunately not been copied. To vest in a single administrative official the power finally to decide issues which may affect the destinies of the state and require his decision in such a narrow limit of time is indefensible. In another group of states, of which Massachusetts is a good representative, the objection is considered and finally decided on by an administrative board. In the case of certificates filed with the secretary of the commonwealth, the board is composed of the secretary of the commonwealth, the attorney-general, and three unpaid commissioners. This ballot commission is granted power to summon witnesses and administer oaths.[5] Another excellent system was provided by the Pennsylvania act of 1891.[6] This statute declared that objections as to the form or apparent conformity or nonconformity to law should be considered by certain administrative officers named in the law. But objections to the validity of a certificate other than as to apparent conformity were decided by the court of common pleas or, if the court was not in session, by one or more judges in vacation. In the states in which the statute is silent as to objections to certificates an interested party could probably appeal to the court to

[1] Connecticut S.L., 1909, ch. 250. [2] Ohio G.C., 1910, sec. 5005.

[3] Vermont, 1890, No. 9; New York, 1890, ch. 262; Nebraska, 1891, ch. 24.

[4] Colorado, 1891, p. 144; Utah, 1896, ch. 69.

[5] Massachusetts, 1890, ch. 436; 1894, ch. 343.

[6] Pennsylvania, 1891, p. 349.

secure an injunction against the acceptance for filing of an invalid certificate, just as errors in the printing of the ballot or the description of the candidates may be corrected by order of a court of competent jurisdiction.[1]

3. PROVISIONS FOR PUBLICITY AND INSTRUCTION OF VOTERS

Not only are all certificates of nomination open to public inspection under proper regulations,[2] but the state advertises the name of every candidate which is to appear upon the ballot. The Wisconsin law of 1889 is typical of the more complete acts.[3] This statute provided that the county clerk, at least seven days prior to the day of election, should publish the names of all candidates nominated to public office in the form, order, and arrangement of the ballot to be used on the day of election. The notice was to be inserted in not less than two nor more than four newspapers, if there were so many in the county. One of such newspapers was to represent the political party casting the largest number of votes, and one was to represent the political party casting the next largest number. Publication was to be daily, if there were daily newspapers; otherwise one publication was sufficient. Printed lists containing the name, residence, business, and political designation of each candidate were also posted in a conspicuous place in each ward.

The officers printing the ballots are also charged with the preparation of specimen ballots, which are facsimiles of the official ballots except that they lack the official indorsement and are printed on paper of a different color. They are posted about the polling-place and are usually obtainable by the voters. To enable the elector to indicate correctly his choice of candidates and measures, cards of instruction are always prepared and posted in the voting-booths and about the polling-place. These cards contain instruction on how to obtain ballots; the manner of preparing them; obtaining new ballots in place of those accidentally spoiled; obtaining assistance in marking the ballot; and usually there are appended certain penal sections of the law relating to the conduct of voters.[4]

These provisions are an advance over the unofficial ballot. It places, as far as possible, all candidates on an equality by advertising each man. It also serves notice on the electorate that these are the candidates they will be called upon to select from, and instructs them in the preparation of their ballot.

[1] *State* v. *Elliott*, 17 Washington 18; *State* v. *Ramsey Co.*, Dist. Ct., 74 Minnesota 177.

[2] Massachusetts Acts and Resolves, 1888, ch. 436. [3] Wisconsin, 1889, ch. 248.

[4] See, for example, Iowa Laws, 1892, ch. 33, or Kansas Laws, 1893, ch. 78.

4. THE ARRANGEMENT OF THE POLLING-PLACE

The arrangement of the polling-place was also altered by the Australian ballot. Under the new law the officers charged with designating the polling-places are required to furnish a sufficient number of voting-booths or compartments. In the Massachusetts act of 1888 the number was placed at not less than one compartment for every seventy-five voters with a minimum of three in each town or precinct.[1] These compartments must be so constructed that an elector when marking his ballot will be screened from observation. The portion of the room in which the compartment and the ballot box are situated is separated from the remaining portion by a guard-rail so placed that only those inside the guard-rail can approach within a specified distance, usually six feet. But the arrangement must be such that neither the ballot box nor the compartments are hidden from the view of those outside the rail. In Massachusetts the person voting must also be in the sight of those outside the rail, but this rule has not been followed.[2] A much larger number of states, in fact, require the booth to have a curtain or door which conceals almost all of the elector's body when the door is closed.[3] Indiana tries to obtain additional security by providing for each precinct a chute or passage with a railing, rope, or wire on each side commencing fifty feet away from, and leading to, the polling-place. One challenger and one poll-book holder are allowed to stand at the sides of the chute near the challenge window, but no other person can remain within fifty feet of it except for the purpose of offering his vote.[4]

[1] Massachusetts Acts and Res., 1888, ch. 436.

[2] *Ibid.* The same rule is followed in Texas and Oregon; see Texas R.S., 1895, sec. 1787; Oregon, 1891, p. 8.

[3] New York, 1890, ch. 262; North Carolina, 1909, ch. 867 (New Hanover County Act); Kentucky, 1892, ch. 65; Montana, 1901, p. 118.

[4] Indiana R.S., 1914, secs. 6922–23; Oklahoma, 1893, ch. 33, sec. 36.

CHAPTER IV

THE DEVELOPMENT OF THE AUSTRALIAN BALLOT IN THE UNITED STATES—THE FORM OF THE BALLOT

1. THE DIFFERENT TYPES OF BALLOTS IN THE UNITED STATES

The use of the term "Australian ballot" in the United States is very misleading, because we have not only departed from the South Australian statute, but have enacted ununiform ballot laws in the respective states. Eliminating minor differences, three types of the ballot have developed in the United States: the office-group, the party-column, and the separate-party ballots.

The pattern statute for those states which have adopted the office-group form of the ballots was the Massachusetts act of 1888. This law provided for the blanket form of the ballot, the names of the candidates for each office being

> arranged under the designation of the office in alphabetical order, according to surnames, except that the names of candidates for the offices of electors of president and vice-president shall be arranged in groups, as presented in the several certificates of nomination or nomination papers. There shall be left at the end of the list of candidates for each different office as many blank spaces as there are persons to be elected to such office, in which the voter may insert the name of any person, not printed on the ballot, for whom he desires to vote as candidate for such office.[1]

The model of the party-column type was the Indiana statute of 1889. This also adopted the blanket form of the ballot, but provided that all nominations of any party or group of petitioners should be

> placed under the title and device of such party or petitioners as designated by them in their certificate or petition; or if none be designated, under some suitable title and device. . . . . The arrangement of the ballot shall, in general, conform as nearly as possible to the plan hereinafter given, and the device named and list of candidates of the Democratic party shall be placed in the first column on the left-hand side of said ballot; of the Republican party in the second column; of the Prohibition party in the third column, and of any other party in such order as the Board of Election Commissioners shall decide.[2]

[1] Massachusetts Acts and Res., 1888, ch. 436.

[2] Indiana, 1889, ch. 87.

The separate-party or "shoestring" type of ballot is merely the blanket party-column ballot cut into strips, and closely resembles the old unofficial ballots. This is decidedly inferior to the blanket ballot, and has not been widely adopted. It was used in New York[1] from 1890 to the adoption of the Australian act of 1895; in Texas[2] from 1903 to 1905; in Connecticut[3] until 1909; and in New Jersey[4] until 1911. At the present time this form is used in only two states, Missouri[5] and New Mexico.[6]

2. THE OFFICE-GROUP VERSUS THE PARTY-COLUMN BALLOT

At first the office-group arrangement was the most popular, and by 1891 it had been adopted in nineteen states against thirteen for the party-column type. In that year Washington and Wisconsin abandoned the office-group form in favor of the party-column type, and for the next ten years the trend was very marked in favor of the party-column arrangement. Since 1900 there have been signs of a swinging back to the Massachusetts model. Five states, Pennsylvania,[7] New York,[8] Maryland,[9] California,[10] and Kansas,[11] changed from the party-column to the office-group type, and one state, New Jersey,[12] adopted this in place of separate-party ballots. Two states, Rhode Island[13] and Alabama,[14] abandoned the office-group form in favor of the party-column type, and three new states, Texas,[15] Connecticut,[16] and North Carolina[17] (New Hanover County), also provided for the party-column ballot.

The relative merits of the Massachusetts and Indiana forms of the ballot have been debated many times. The chief criticisms of the Massachusetts act[18] are: First, it takes too long to mark the ballot, and this causes delay in large precincts. Secondly, this system causes the less educated to become discouraged and stay away from the polls, or if

[1] New York, 1890, ch. 262; 1895, ch. 810.
[2] Texas, 1903, p. 133; 1905 (special session), ch. 11.
[3] Connecticut, 1889, ch. 247; 1909, ch. 250.
[4] New Jersey, 1911, ch. 183.
[5] Missouri, 1897, p. 107.
[6] New Mexico, 1905, ch. 127.
[7] Pennsylvania, 1903, p. 340.
[8] New York, 1913, ch. 821.
[9] Maryland, 1901 (extra session), ch. 2.
[10] California, 1911, ch. 46.
[11] Kansas, 1913, ch. 189.
[12] New Jersey, 1911, ch. 183.
[13] Rhode Island, 1905, ch. 1229.
[14] Alabama, P.C., 1907, p. 335.
[15] Texas, 1905, ch. 11.
[16] Connecticut, 1909, ch. 250.
[17] North Carolina, 1909, ch. 867 (New Hanover County).
[18] Dana, *Australian Ballot System of Massachusetts*, p. 4.

REPUBLICAN TICKET

STATE OF NEW MEXICO
COUNTY OF GRANT

For Presidential Electors
H. J. HAMMOND
C. L. HILL
JUAN ORTIZ
For United States Senator
FRANK A. HUBBELL
For Representative in Congress
BENIGNO C. HERNANDEZ
For Governor
HOLM O. BURSUM
For Lieutenant Governor
W. E. LINDSEY
For Secretary of State
GILBERTO MIRABAL
For State Auditor
WILLIAM G. SARGENT
For State Treasurer
GREGORY PAGE
For Attorney General
FRANK W. CLANCY
For Superintendent of Public Instruction
J. HOWARD WAGNER
For Commissioner of Public Lands
ROBERT P. ERVIEN
For Justice of the Supreme Court
CLARENCE J. ROBERTS
For State Corporation Commissioner
MALAQUIAS MARTINEZ
For State Senator—24th District
W. D. MURRAY
For State Senator—12th District
W. S. COX
For Representatives—52nd District
W. E. WATSON
FARIS V. BUSH
For District Attorney—6th Judicial District
R. F. HAMILTON
For County Commissioner—1st District
M. R. BUCHANAN
For County Commissioner—2nd District
L. H. BARTLETT
For County Commissioner—3rd District
JOHN ROBSON
For Probate Judge
GEORGE D. McCREARY
For County Clerk
JAMES A. SKIPLEY
For Sheriff
ARTHUR S. GOODELL
For Assessor
C. W. MARRIOTT
For Treasurer
HARRY W. LAMB
For Superintendent of Schools
MRS. GEORGE H. BIBBY
For Surveyor
WILLIAM HARRIS

Separate-Party Ballot
Used in New Mexico

they come, they make mistakes.[1] Thirdly, the Massachusetts form encourages independent voting and will lead to the breaking up of parties. Fourthly, the candidates whose names stand first in the groups have an advantage over those lower down. Fifthly, the fatigue of marking every name causes a falling off from the head of the ticket.

In defense of the Massachusetts plan it is argued that: First, it requires a very short time to mark the tickets, and if sufficient booths are provided, the electors deposit their marked ballots as fast as they can pass the check officials, and there is very little delay, even in large precincts. Secondly, the less educated do not stay away from the polls; the percentage of registered electors voting in the less educated wards is higher than in the more educated wards. Thirdly, the office-group plan is more favorable to independent voting, because it is as easy to vote independently as to vote straight. The Massachusetts form compels some consideration of each candidate, and in those states where the office-group type prevails, independent voting is high.[2] Fourthly, there is a falling off from the head of the ticket through fatigue, but this is not universally true. This falling off in the vote for minor offices is more of an argument against the length of the ballot than against its form. Fifthly, the slight advantage to the candidate whose name appears first practically makes no difference when the public has an opinion to express. Sixthly, the office-group form does away with the difficulty of ascertaining the voter's intention. Since the ballot has no party circle, and as only the names marked can be credited with votes, the election officers can make no mistakes.[3] Seventhly, it places all voters on an equality in the preparation of the ballots.[4]

[1] Message of Governor Utter of Rhode Island, 1905.

[2] Shaw, "Good Ballot Laws and Bad," *Outlook*, LXXXI, 863; *Nation*, LXXXI, 415.

[3] *North American Review*, CLXVIII, 108; *Nation*, LXXII, 170.

[4] *Nation*, LXXII, 170.

The objections to the Indiana form[1] are: First, the party-column type tends to promote straight party voting and places a penalty on independent action. Secondly, being provided with more than one method of voting, the voter runs the risk, in marking elsewhere than in the party circle, of having his vote misinterpreted. Thirdly, it is possible to tell whether or not a voter is voting straight by the relative amount of time he takes to mark his ballot. Fourthly, the use of the party column, circle, and emblem is a concession and appeal to the illiterate and ignorant voter. Fifthly, the multiplication of columns, titles, and blank spaces increases the size of the ballot and makes it an "unwieldy monstrosity."

The defense of the Indiana form is based on the assumption that most electors desire to vote a straight ticket and that this system is a convenience to facilitate voting.[2] The fact that most American voters were accustomed to seeing all of a party's nominees in a single column, and to voting a whole party ballot at a single operation, explains the success of this form. Because of its appeal to party loyalty the party column is favored by the professional politicians because they are sure of a larger party vote.

A different form of the ballot has been used in two counties of Wisconsin. This is the coupon ballot which was invented by Mr. Moncena Dunn. This coupon ballot consists of a number of differently colored sheets of cardboard stapled together. The Republican ticket is printed on green paper; the Democratic, on red, etc. Although the colors must not be the same, the law authorizes the chairmen of the state central committees of the several parties to select the colors. Individual nominations are printed on white paper. Each ticket is divided by perforated lines into as many coupons as there are offices to be filled, all the candidates for presidential electors being placed on one coupon. Each coupon bears the name of an office, a number, the candidate's name, and his party designation. All coupons for any office, as, for example, that of sheriff, which is No. 12, have the same number regardless of the party ticket.

To illustrate the manner of voting under this scheme, let us suppose that John Doe wishes to vote for all the Republican nominees. He detaches the entire Republican sheet, and places it inside the official ballot folder. Richard Roe wants to vote a Democratic ticket for all the offices except that of sheriff. He detaches the entire Democratic sheet

[1] Clinton Rogers Woodruff, "Objections to the Pennsylvania Law, 1893," *Annals of the American Academy of Social and Political Science*, XVII, 202–3.

[2] Cleveland, *Organized Democracy*, p. 264.

and places it inside the official envelope, and then tears out the coupon for sheriff from the ——— ticket and puts it in with the Democratic sheet. The basic idea of this plan is the segregation of the names of the men voted for from those which are rejected. All coupons selected to be voted are placed inside of an official envelope, which is divided into pockets to receive the detached coupons. The rejected coupons are placed inside of another envelope called the "remainder envelop." If the elector wishes to vote for names not on the ballot, he is given a sheet of white paper properly indorsed by the ballot clerks. This must be returned folded so that the indorsement can be seen. The official folder is placed in a pocket of the larger envelope and sealed by the inspectors. The "remainder envelope" is also sealed by the inspector with official seals furnished by the secretary of state. In counting the votes, detached coupons prevail over those of the same number attached to the party sheet.

3. PRESENT STATUS OF THE FORM OF THE BALLOT

The party-column type of the ballot is used in twenty-seven states; of these seven are eastern,[1] five are north central,[2] four are southern,[3] and eleven are western states.[4] Except in the South, the party-column form outnumbers the office-group type in every section of the United States, but its greatest relative strength is in the north central and eastern states.

In determining the order in which the party tickets shall appear on the ballot, the usual rule is to place the decision with the officer preparing the ballots, giving precedence to the parties polling the highest number of votes.[5] Some states fix in the law the position of the largest two or three parties, but leave the minor parties to be placed according to the foregoing rule.[6] Wisconsin requires the party columns to be placed

[1] Connecticut Laws, 1909, ch. 250; Delaware, 1891, ch. 37; Maine, 1891, ch. 102; Rhode Island, 1905, ch. 1229; Vermont, *P.S.*, 1906, sec. 136; West Virginia, 1907, ch. 71.

[2] Illinois, 1891, p. 107; Indiana, 1897, ch. 47; Michigan, 1891, No. 190; Ohio, 1891, p. 458; Wisconsin, 1911, ch. 5.

[3] Alabama P.C., 1907, p. 335; Kentucky, 1892, ch. 65; Louisiana, 1898, p. 283; North Carolina, 1909, ch. 867.

[4] Arizona R.S., 1895, sec. 2330; Iowa, 1892, ch. 33; Idaho P.C., 1908–9, sec. 405; Oklahoma, 1910, ch. 111; Texas, 1905 (special session), ch. 11; Washington, 1901, ch. 89; Utah, 1897, p. 186; Montana P.C., 1895, sec. 1354; Wyoming, 1911, ch. 51; North Dakota, 1893, ch. 60; South Dakota, 1893, ch. 80.

[5] See Kentucky, 1892, ch. 65; Ohio, 1913, p. 111.

[6] See Oklahoma, 1910, ch. 111; Delaware, 1891, ch. 37.

alphabetically according to the first letter of the party name.[1] Independent columns are always placed at the right of the party columns. After the order has become established and a party's adherents instructed where to find the ticket, the party is very loath to change, even for a position on the ballot deemed originally more advantageous.

In the states possessing the party-column type of the ballot, the law usually provides for placing a circle or square at the head of each party ticket close to the party title, and the elector can vote for all the party nominees by making a cross (X) in such circle. Four party-column states have abolished the party circle.[2] The Iowa form eliminates most of the objectionable features of the party-column type and makes its operation somewhat akin to the office group. Rather curiously, two of the office-group types have added party circles.[3] In Pennsylvania the titles of the parties or groups are printed in the first column at the left of the ballot, and a party square is placed to the right of each name. In Nebraska, the party titles and circles are placed at the top of the ballot just under the initiative and referendum measures. In Colorado[4] in place of the party circle there formerly was printed across the head of the ballot above the list of nominees the words: "I hereby vote a straight ——— ticket, except where I have marked opposite the name of some other candidate." An elector who wished to vote a straight party ticket had only to write in the name of the party desired, but this provision was abolished in 1913. It would seem that the straight-voting provisions would make the ballot in these states very similar in operation to the Indiana form.

Twelve other states follow the example of Indiana and place party emblems or devices on the ballot. The list includes New Hampshire, New York, Delaware, Rhode Island, West Virginia, Indiana, Ohio, Michigan, Kentucky, Louisiana, Alabama, Oklahoma, and Utah. In this group of thirteen states all but New York are of the party-column type. The portion of the Alabama statute of 1903 relating to party emblems is typical.[5] It provides that each political party shall by its state convention or state executive committee adopt and file with the secretary of state an emblem to be printed at the top of the party column on the ballot. The party cannot select a design similar to one already

[1] Wisconsin, 1911, ch. 5.

[2] Iowa, Texas, Wyoming, and South Dakota. The first act of this type was the Missouri law of 1889, Missouri R.S., 1889, ch. 60.

[3] Pennsylvania, 1903, p. 338; Nebraska C.S., 1909, sec. 3375.

[4] Colorado, 1899, ch. 94.

[5] Alabama P.C., 1907, p. 334.

adopted by any party in the state, nor can it choose the coat-of-arms or seal of any state or the United States, or the national flag, or the likeness of any person, or any religious emblem or symbol of any fraternal organization, or a representation of the coin or currency of the United States. West Virginia represents another type of laws in which the only restriction is that a party cannot adopt a design already used by any other party.

There is a veritable picture gallery of designs in the different states. The eagle is the common emblem of the Republican party, and is used in nine states;[1] but the party is represented in Kentucky by a log cabin, in Alabama by a picture of Vulcan, and in Michigan by a picture of Lincoln on the United States flag. The Democratic vignette in eight states is a game cock or rooster in the act of crowing;[2] but it is represented in New York, Rhode Island, and New Hampshire by a star, in Delaware by a plow, and in Michigan by an arm holding the national flag. The picture of a bull moose is the Progressive emblem in Indiana, Delaware, Rhode Island, Alabama, Louisiana, and Oklahoma; a bull-moose head in New York, New Hampshire, Ohio, and Utah; but it is represented by a picture of Roosevelt in West Virginia, Michigan, and Kentucky. The Prohibitionists have a great variety of devices. In Indiana they have a representation of a sun rising over a body of water; in Delaware and West Virginia, a picture of a house and yard; in Rhode Island and New York, a fountain; in Oklahoma, a flying dove; and in Kentucky, a phoenix. The common Socialist vignette is a picture of two clasped hands in front of a globe. This is their vignette in Indiana, Delaware, New Hampshire, West Virginia, Utah, Alabama, Louisiana, and Kentucky; but in Rhode Island they have a pair of scales; in New York, Ohio, and Michigan, an arm holding a torch; and in Oklahoma, an extended hand. The Social Labor party is the only political party which has a single emblem. It is an arm and hammer in the position of striking. Alabama is the only state to permit political parties to print on the ballot a motto or party shibboleth. The Democratic party has selected "White Supremacy" and "For the Right"; the Progressives, "Pass Prosperity Around"; and the Republicans, "Progress and Prosperity."

There is really little excuse for the party emblem. It is a concession to the illiterate and ignorant, an appeal to the party passions, attach-

[1] Indiana Laws, Ohio, Delaware, West Virginia, New York, New Hampshire, Rhode Island, Oklahoma, and Utah.

[2] Indiana, Ohio, West Virginia, Alabama, Kentucky, Louisiana, Oklahoma, and Utah.

ments, and sentiments of the voter, and a device that tends to divert the attention of the elector from present issues to past traditions. Could there be a more open appeal to party and sectional passion and hatred than the Democratic emblem and motto in Alabama?

The office-group type of the ballot has been adopted in seventeen commonwealths. There are four eastern[1] states, one north central,[2] six southern,[3] and six western.[4] In eight states, Massachusetts, New Jersey, Maryland, Tennessee, Colorado, Kansas, Nevada, and Oregon, the names of the candidates are arranged under the titles of the offices alphabetically according to surnames. In Minnesota, Nebraska, Pennsylvania, and New York the candidates of each party occupy the same relative position for each office; that is, if the Republicans are given first place, depending on the size of the vote, all the Republican candidates occupy first place under the title of the various offices regardless of whether the particular candidate's name begins with *A* or *Z*. Mississippi and Florida give full discretion to the officer printing the ballots as to the order in which the names shall appear. Virginia makes no provision as to the order of names. Arkansas and California are the only states which attempt to overcome the advantage of position by a scheme of rotation. Nebraska in 1915 provided for rotation of names in counties of 50,000 or more inhabitants.

As a general rule, the "office-group" states permit the party or other political appellation to be printed after the name of each candidate, but there are certain exceptions. In five southern states, Florida, Mississippi, Tennessee, Virginia, and Maryland (eleven counties), all party designations have been abolished. The object is to get rid of the negro vote. In these five states the Democratic nominees are printed first, and it is easy to instruct even an ignorant white to mark the first name or the first five, as the case may be, but an ignorant voter might and does make many mistakes if he has to count down a certain number before starting to mark.[5] Minnesota has abolished all party nominations

[1] Massachusetts, 1888, ch. 436; New Jersey, 1911, ch. 183; New York, 1913, ch. 821; Pennsylvania, 1903, p. 340.

[2] Minnesota, 1893, ch. 4.

[3] Arkansas, 1891, Act 30; Florida, 1895, ch. 4328; Maryland, 1901, ch. 2; Mississippi Election Ordinance, 1890; Tennessee, 1889, ch. 188; Virginia, 1896, ch. 700.

[4] California, 1911, ch. 46; Colorado, 1894, ch. 7; Kansas, 1913, ch. 189; Nebraska, 1899, ch. 26; Nevada, 1891, ch. 40; Oregon, 1891, p. 23.

[5] *Political Science Quarterly*, XXI, 56.

for members of the legislature.[1] A number of states have abolished party designations for the candidates for certain offices. About one-fourth of the states require candidates for judicial offices to be elected on a non-partisan ballot.[2] The non-partisan movement has taken a firm hold on cities with a commission form of government where the tendency is to prohibit party nominations.[3] The non-partisan movement is also making headway in other local offices, as school officers.[4]

All but six states permit an elector to write in the name of any candidate not appearing on the ballot as a candidate.[5] Thirteen states permit such name to be written in a blank column placed at the right of the ballot in which only the titles of the offices are printed.[6] The larger number of states, twenty-six in number, provide blank spaces under the name of each candidate or group of candidates.[7]

Constitutional amendments, which are submitted to the electorate at the same election at which officers are chosen, are either printed on the same ballot with the list of candidates or on a separate ballot. The first method is used in twenty-seven states, and the latter in fifteen.[8] Where the amendments are printed on the same ballot with the list of candidates, the common rule is to print them at the foot of the ballot after the list of candidates. Words to aid the voter in expressing his choice, as "for the amendment," "against the amendment," "yes,"

[1] Minnesota Laws, 1913, ch. 389. California will soon vote on a legislative proposal to abolish all party designations for state and local offices.

[2] Iowa, 1913, ch. 104; Washington (for Superior Court), 1907, ch. 209; Kansas, 1913, ch. 193; Arizona, Nebraska, South Dakota, Illinois for cities of 200,000 or more, North Dakota, Wisconsin, Ohio, Pennsylvania, Wyoming.

[3] See Kentucky, 1910, ch. 50; Illinois, 1911–12, p. 22; Nebraska, 1911, ch. 24; Kansas, 1907, ch. 114.

[4] South Dakota, 1907, ch. 86; North Dakota, 1913, ch. 152; Wisconsin, 1913, ch. 492.

[5] See chapter v.

[6] New Hampshire, Connecticut, Rhode Island, Illinois, Alabama, Louisiana, North Carolina (New Hanover County), Texas, Idaho, Montana, Utah, Washington, Wyoming.

[7] No provision for either blank spaces or blank column in Indiana, Delaware, Oklahoma, Virginia, South Dakota, and New Mexico. Nevada provides blank spaces after each office group for substituting names to fill vacancies. In West Virginia t was not possible to tell whether blank spaces or a blank column is provided, either from the statute or sample ballots.

[8] In Delaware constitutional amendments are not submitted to popular vote; and in North Carolina, Virginia, and West Virginia there are no provisions in the election laws for their submission.

"no," are added. In Washington and Nebraska the amendments are printed above the list of candidates, while in Alabama, Arkansas, Mississippi, Connecticut, Massachusetts, and California they are printed in one or more columns at the right of the ballot.[1] In printing constitutional amendments or other questions on the ballot only a brief descriptive title or the substance of the amendments is used. But in Michigan, North Dakota, South Dakota, Iowa, Missouri, Mississippi, and Tennessee the amendment is printed in full.

The common rule is to require an elector voting for or against these amendments to indicate his answer to each proposition separately. Connecticut tries to secure a larger vote on the amendments by introducing the equivalent of the party circle. In this state constitutional amendments are printed in two extra columns; the first of the columns is designated "Yes," and the second "No." At the head of each column is printed a circle, and an elector can vote for or against all such propositions by placing a cross in the proper circle.[2] Nebraska[3] and Indiana[4] have introduced the expedient of allowing political parties to take action for or against an amendment and such action is indicated on the ballot. Under the party-circle arrangement, by making a cross in the party circle the elector has his vote counted for or against every indorsed amendment unless he marks the amendments to the contrary.

The stub.—In order to do away with the objection to numbering the ballot and yet make sure that the elector returns the identical ballot given to him, nineteen states provide for a detachable stub. This stub remains on the ballot until presented by the elector for voting; then, after being identified, it is removed without exposing the ballot. This is a very effective way of guaranteeing that the elector votes the same ballot given to him by the ballot clerks, and will detect at once any attempt to remove the ballot from the polling-place.[5]

Another way of enabling the election judges to see that none but official ballots are deposited is the provision for placing an official indorsement on the back of the ballot in such a position that it can be seen when the ballot is folded. This indorsement consists of the words "official

[1] From an examination of the ballots.

[2] Connecticut, 1909, ch. 250.

[3] Nebraska, 1901, ch. 29.

[4] Indiana R.S., 1914, secs. 6944*a* and 6944*b*.

[5] The states which use the stub are Connecticut, New Jersey, New York, Ohio, Michigan, Alabama, Kentucky, North Carolina (New Hanover County), Maryland, Tennessee, Florida, Arizona, Oregon, Washington, Utah, California, Colorado, Montana, and Nevada.

TABLE I

SHOWING THE BLANKET FORM OF THE AUSTRALIAN BALLOT

OFFICE GROUP			PARTY COLUMN		
Without Party Circle or Emblem	With Party Emblem	With Party Circle	Without Party Circle or Emblem	With Party Circle	With Party Emblem and Circle
Massachusetts New Jersey Minnesota Arkansas Florida Mississippi Maryland Tennessee Virginia California Colorado Kansas Nevada Oregon	New York	Nebraska Pennsylvania	Iowa South Dakota Texas Wyoming Delaware	Connecticut Vermont Maine Illinois Wisconsin North Carolina Arizona Idaho North Dakota Washington	New Hampshire Rhode Island West Virginia Indiana Michigan Ohio Alabama Kentucky Louisiana Oklahoma Montana Utah
Total, 14	Total, 1	Total, 2	Total, 4	Total, 10	Total, 12

ballot for," followed by a designation of the polling-place for which the ballot is prepared, the date of the election, and a facsimile signature of the election officer preparing the ballots.[1] The official indorsement upon the back of the ballot is used in thirty-two states.[2] This indorsement is printed on the ballot in twenty-seven states, and in five states the election officers stamp the indorsement on the back of the ballot before it is delivered to the voter.[3] California[4] and Nevada[5] provide that the paper used for the ballots shall be watermarked with a design selected by the secretary of state, and this watermark is discernible when the ballot is folded. The design selected is kept secret from every person, except those engaged in preparing the ballots, until the day of election. The design is changed before each general election, and is not used again for a specified number of years.

[1] See Maine, 1891, ch. 102; Massachusetts, Acts and Resolves, 1888, ch. 436.

[2] The states making no provision for a printed or stamped indorsement on the back and outside of the ballot are Delaware, Michigan, Indiana, Alabama, Arkansas, Florida, Missouri, Virginia, Nebraska, Nevada, Oklahoma, Texas, Oregon, and Washington.

[3] Idaho, 1899, p. 33; South Dakota, 1897, ch. 60; North Dakota R.C., 1899, sec. 515; Montana, 1889, p. 135; Wyoming R.S., 1899, sec. 290.

[4] California, 1891, ch. 130.

[5] Nevada, 1891, ch. 40.

CHAPTER V

THE DEVELOPMENT OF THE AUSTRALIAN BALLOT IN THE UNITED STATES; THE MANNER OF VOTING; PENAL SANCTIONS

The greatest weakness of the unofficial ballot was its failure to secure a secret vote. The Australian ballot remedies this fault, first, by providing for the securing of ballots by the electors only on election day, within the polling-place, and from the regular election officers; and secondly, by providing absolute secrecy in the marking of the ballots.

1. OBTAINING THE BALLOTS

Instead of distributing the ballots in advance of the election, or by ticket peddlers at each polling-place on the day of election, as under the unofficial ballot system, the Australian ballots are distributed only within the polling-place to electors who have proved their qualifications. The New Hampshire law of 1891[1] is typical of the procedure required for obtaining the ballots.

> Any person desiring to vote shall, before being admitted within the guard-rail, give his name in a loud and distinct tone of voice to one of the ballot clerks, who shall thereupon likewise announce the same, and if such name is found upon the check-list by said ballot clerk, he shall put a check mark against it and again repeat the said name. The voter, unless challenged, shall then be allowed to enter the space inclosed by the guard-rail as above provided. If his vote is challenged, he must not enter until he makes the affidavit now required by law. After he enters the inclosed space, the ballot clerk shall give him one ballot only.

Before the ballot is given to the elector, nineteen[2] states require the election officers to write their names or initials upon the back of the ballot in such a place that it will be seen when the ballot is folded. The usual provision is to require the initials of the judge or clerk having charge of the ballot,[3] but some of the states, as Minnesota[4] or Missouri,[5]

[1] New Hampshire Laws, 1891, ch. 49, sec. 22.

[2] Illinois, Indiana, Wisconsin, Michigan, Minnesota, Arkansas, Florida, North Carolina (New Hanover County), Kentucky, Maryland, Missouri, West Virginia, Delaware, North Dakota, Oklahoma, Wyoming, Nebraska, Texas, Iowa.

[3] See Hurd, *R.S.* (Illinois), 1913, ch. 46, sec. 309.

[4] Minnesota R.L., 1905, ch. 6.

[5] Missouri R.S., 1909.

require the initials of one judge of each party. In Alabama, Florida, Arizona, Colorado, and Utah the initials are placed upon the stub.[1] In sixteen states the same number is recorded on the poll-book and stub, and when the elector returns his ballot to be deposited in the ballot box, the number on the stub is compared with the number in the poll-book, and if it corresponds the stub is removed and the ballot voted. The stub is always so placed on the ballot that it can be removed without exposing the marks upon the ballot.[2] Ten states, Massachusetts, Maine, New Hampshire, Vermont, Pennsylvania, Mississippi, Louisiana, Virginia, South Dakota, and New Mexico, make no provision for numbering or initialing the ballot or stub before it is delivered to the voter, but each of these ten states indicates the official character of the ballot by a printed or stamped indorsement upon the back. In Idaho, South Dakota, North Dakota, Montana, and Wyoming the official indorsement is stamped upon the back of the ballot before it is given to the voter.[3]

The requirement of the printed, stamped, or written indorsement serves two purposes: first, it enables the elector to tell at a glance that this is an official ballot; secondly, it guards against the elector returning another ballot than the one given to him, and enables the election officers to detect any attempt to cast an unofficial ballot. If, through the collusion of an election officer, an indorsed ballot is removed from the polls, a vote-buyer can defeat the purpose of the law by marking this ballot and giving it to a bribed elector who votes that ballot and returns unmarked the one given to him by the ballot clerk. This scheme, which is known as the "endless chain" or "Tasmanian dodge," has been used a number of times; but if an official indorsement is required, particularly initialing or numbering the ballot, it is impossible to work this plan except through the collusion of corrupt election officials; for under no circumstances can an official ballot be legally taken from the polling-place before the closing of the polls.

The electors are admitted inside the railing as rapidly as the voters can mark and deposit their ballots. In the interest of secrecy and order, it has been considered necessary to limit the number of persons inside

[1] Alabama, 1893, No. 377; Florida, 1895, ch. 4328; Arizona R.S., 1901, secs. 2330, 2338; Utah C.L., 1907, secs. 839, 846; Colorado, 1908, ch. 43.

[2] New Jersey, 1911, ch. 183; Howell, *Statutes* (Michigan), 1913, sec. 236; Connecticut, 1911, ch. 263. Other states following this rule are Ohio, Tennessee, Kentucky, Maryland, North Carolina, New York, Arizona, California, Montana, Nevada, Washington, Oregon, and Utah.

the rail. While the number varies, it is never more than two or three in excess of the number of booths or compartments. Thus New Hampshire[1] will permit, besides the election officers and persons admitted inside the rail by the election officers to keep order, no more voters at a time than there are compartments. Idaho[2] will allow one voter in excess of the number of booths. North Carolina[3] will permit an excess of two voters. Since the elector is limited in the time which he can take to mark his ballot, and as he must quit the inclosed space as soon as he deposits his vote, this provision causes practically no delay or inconvenience to the electors.

2. MARKING THE BALLOTS

Upon receiving his ballot, the elector, without leaving the inclosed space, must retire alone to one of the unoccupied election booths to mark his ballot. The procedure in marking the ballot differs as much as the form of the ballot, but is along the same general lines. In the office-group states, excluding Nebraska and Pennsylvania, which have added a method of voting a straight ticket by a single operation, each candidate must be separately considered in marking the ballot, except presidential electors, who can be voted for by groups.[4] In Arkansas[5] and Virginia[6] the voter indicates his choice by striking out, erasing, or drawing a line through the names of all candidates not voted for. All the other office-group states require the elector to mark the name of every candidate voted for by making a cross (X) opposite his name. Three of the party-column states have also adopted the office-group method of marking each individual candidate.[7] In these states the same procedure is followed in voting either a "straight" or a "split" ticket.

In the larger number of states there is a decided difference in the minimum amount of labor required in voting a "straight party" and a "split" ticket. In the twenty-three states which use the party circle or square, an elector can vote for all the party candidates by making

[1] New Hampshire Laws, 1891, ch. 49.

[2] Idaho, 1891, p. 57.

[3] North Carolina (New Hanover County), 1909, ch. 867.

[4] No special provision is made for voting for presidential electors as a group in Mississippi, Florida, Tennessee, Maryland (in counties where there are no party designations), Oregon, and Nevada.

[5] Arkansas, 1891, act 30. [6] Virginia, 1894, ch. 746.

[7] Iowa, 1892, ch. 33; South Dakota, 1913, ch. 198; Montana, 1901, p. 117; Wyoming, 1911, ch. 51.

a cross in the party circle.[1] In Texas[2] and West Virginia[3] the elector can vote a straight ticket by marking out or defacing the tickets not voted for.

Each of these twenty-four states penalizes independent voting. Thirteen[4] of these are fairly liberal, and permit an elector who wishes to "split" his vote to make a cross (×) in the party circle and a cross opposite the name of any candidate desired on another party ticket, in which case the candidates individually marked prevail over the opposing candidates on the party ticket. But in North Dakota, Utah, and Idaho the contrary rule prevails; so in these three states he must also erase all names under the party circle for which he does not desire to vote. In West Virginia, Texas, and Maine the elector may strike out the names of candidates under his party circle and insert other names in their places. In nine states[5] the independent voter must mark every name, while his partisan neighbor votes for all of the nominees of his party with a single stroke. There is certainly a strong inducement to party regularity in these states. In Missouri the voter is given separate ballots of every political party. He takes these tickets to the booth, and if he wishes to vote a straight Democratic ticket he selects and folds this one and hands it to the receiving judge. The rejected tickets are also folded and returned to another judge. If the elector desires to vote for a candidate not on his ticket, he must erase the name on his ticket and insert the name of the candidate desired.[6]

In all but six states the elector may vote for any person whose name does not appear on the ballot by writing the name in the appropriate space. In Nevada, Oklahoma, New Mexico, and South Dakota there is no provision for voting for a man whose name does not appear on the ballot; and in Delaware[7] and Indiana[8] writing in any name on the ballot

[1] See Table I, p. 46.

[2] Texas, 1905, ch. 11 (extra session).

[3] West Virginia, Code, 1891, ch. 3. The law also allows the use of the party circle.

[4] Delaware, Vermont, Illinois, Ohio, Michigan, Oklahoma, Kentucky, Alabama, Idaho, Colorado, Utah, Rhode Island, and North Dakota.

[5] Connecticut, Pennsylvania, Indiana, Wisconsin, Louisiana, Arizona, Nebraska, North Carolina, and Washington.

[6] Missouri R.S., 1909, sec. 5900. In New Mexico there is no provision for marking the ballots.

[7] Delaware, 1913, ch. 65.

[8] Indiana R.S., 1914, sec. 6927.

is prohibited. In Indiana,[1] Maine,[2] North Dakota,[3] and Washington[4] such names may be placed on the ballot by the use of pasters.

The instrument used for marking the ballot is generally a pencil, or pen and ink. In Nevada,[5] Oklahoma,[6] California,[7] and Louisiana[8] a stamp is used. The reasons for using the stamp are to have a uniform mark, and to avoid any peculiarities which might be resorted to in an attempt to identify the ballot. The uniform mark required to be made is the cross (X). In Louisiana the elector in voting for individual candidates obliterates the white square at the right of such candidate's name.[9] This is the Belgian plan and probably gives less opportunity for distinguishing marks than any other. While the scheme of striking out all names not voted for has a certain psychological value, yet, because of the additional marks, it gives greater opportunity for fraud and identification. The Wisconsin coupon ballot does away with all marks made by the voter upon the ballot.

If a voter accidentally or inadvertently spoils a ballot, he may upon returning it receive another. Most of the states limit the number he may successively receive to three,[10] but Arizona[11] places the number at five. The ballot so returned is required to be canceled and preserved, and returned with the unused ballots.[12] The limit on the number of ballots an elector can possibly obtain is to prevent electors from exhausting the supply of ballots by a process of deliberate mutilation.

3. ASSISTING THE VOTERS

There are considerable differences of opinion as to whether or not illiterate voters should receive assistance in marking their ballots. Mr. Dutton, the father of the Australian ballot, disapproved of aiding

[1] Indiana R.S., 1914, sec. 6927. [2] Maine, 1893, ch. 267.

[3] North Dakota C.L., 1913, sec. 958.

[4] Remington and Ballinger, *Codes and Statutes* (Washington), sec. 4891.

[5] Nevada, 1913, p. 554. [6] Oklahoma, 1910, ch. 111.

[7] California, 1911, p. 409.

[8] Wolf, *Louisiana, R.L.*, 1904, p. 714. The stamp was authorized in Massachusetts in 1896, and its use placed at the discretion of the town or city clerks. The stamp was formerly used in Indiana, Michigan, Delaware, and Maryland.

[9] *Ibid.*

[10] See Vermont, 1890, No. 9; Massachusetts, 1888, ch. 436; Maine, 1891, ch. 102.

[11] Arizona, 1891, No. 64.

[12] Idaho, 1891, p. 57. Maine, 1891, ch. 102. In a few states, as Florida and Indiana, the mutilated ballots have to be destroyed, and a record is kept of the number so destroyed.

the illiterate voter.[1] The usual arguments against aiding the illiterate voter are:[2] first, that a man who is too ignorant to vote correctly is not worthy of the right to vote, because he cannot form that intelligent opinion essential to good government; secondly, that by assisting an ignorant voter you may make it possible to know how an elector votes and so open the door to corruption; thirdly, that the desire to vote will act as an incentive to acquire an education.[3] Those in favor of helping the ignorant elector declare, first, that he has as much interest in voicing his needs by means of the ballot as the educated, and to deny him assistance is to disfranchise him; secondly, that if he votes without assistance, he has to do so in a haphazard way and may vote for the wrong candidates; thirdly, that there is little danger of corruption, as the election officers are bound to secrecy.

The first Australian-ballot act passed in the United States, the Louisville act,[4] made no provision for aiding illiterates, and required every voter to retire alone to one of the compartments and, unaided, to mark his ballot. The Kentucky Court of Appeals in the case of *Rogers* v. *Jacob*[5] declared that this provision violated the section of the constitution requiring all elections to be free and equal. "It practically operates to deprive a person who is unable to read or write of a free and intelligible choice of those he may desire to vote for, and in fact makes free suffrage as to them a matter of chance or accident." The influence of this decision was far-reaching in determining the case in favor of assisting the illiterates.

At the present time voters unable to read the English language are denied assistance in ten states.[6] In Massachusetts an illiterate can obtain assistance in preparing his ballot if he was a voter on May 1, 1857.[7] Wyoming[8] has a similar provision for men or women who were voters on July 10, 1890; and Virginia[9] also permits illiterates to be helped if

[1] "I cannot say that I have very much sympathy for those who lose their votes because they cannot read."—*Parliamentary Papers*, VIII, Question 9352.

[2] Buxton, *Handbook to Political Questions*, pp. 113–15.

[3] *American Law Review*, XXIII, 729.

[4] Kentucky, 1888, ch. 266.

[5] 11 S.W. Rep. 513; *American Law Review*, XXIII, 719.

[6] Nevada, Arizona, South Dakota, Tennessee, Florida, Maryland, Ohio, Delaware, Connecticut, and Vermont. There are no provisions in New Mexico or in the two states which have not adopted the Australian ballot.

[7] Massachusetts, 1888, ch. 436.

[8] Wyoming, 1895, ch. 48.

[9] Virginia, Code, 1904, sec. 122*k*.

they were registered by 1904. North Carolina[1] in the New Hanover County act grants assistance to voters registered under the "Grandfather Clause" or those physically disabled.

The case in favor of disabled voters is much stronger, although the argument that you may make it possible to know how an elector votes, and so open the door to fraud, applies as well to disabled persons as it does to illiterates. It is true that a disabled person can exercise an intelligent choice, and so he should not be disfranchised. In every state disabled voters are allowed to be assisted.[2] The question might be raised as to what constitutes a physical disability sufficient to entitle a man to assistance. Most of the states are silent on this point. Five states[3] provide that intoxication is not such a physical disability. Alabama[4] limits physical disability to blindness or loss of the use of the hands; Ohio,[5] to blindness, paralysis, extreme old age, or other physical infirmity. In most states it is a question of fact to be decided in the first instance by the election judges.

The majority of states require such illiterate or disabled voter to be placed under oath before he is given assistance. Eight[6] states place the administering of an oath at the discretion of the election officer. Thirteen states[7] make no provision for swearing the elector desiring help. This assistance should in every case be given by sworn officers, and this is the rule. In Minnesota, Nevada, and Pennsylvania an elector instead of an officer marks the ballots. In Minnesota and Nevada the number of ballots one elector may mark for another is limited to three and one, respectively, but in Pennsylvania there is no limit to the number one man may prepare.

Before the voter leaves the booth or compartment where he prepares his ballot he is required to fold it so as to conceal its face, and in Delaware[8] he is required to fold it and place it in an envelope. This is the only state that now retains the use of the envelope. The ballot must be so

[1] North Carolina Laws, 1909, ch. 867.

[2] No provision in New Mexico, South Carolina, or Georgia.

[3] Minnesota R.L., 1905, sec. 281; Iowa, 1892, ch. 33; Hurd, *R.S.* (Illinois), 1913, p. 1124; Wisconsin, 1911; North Carolina, 1909, ch. 867.

[4] Alabama, 1893, No. 377. [5] Ohio, 1894, p. 148.

[6] Wyoming, Washington, Oregon, North Dakota, Wisconsin, Maine, Rhode Island, Ohio.

[7] Arizona, Florida, Mississippi, Arkansas, Louisiana, Tennessee, Indiana, Pennsylvania, Connecticut, West Virginia, Vermont, Delaware, Idaho.

[8] Delaware, 1913, ch. 65.

folded as to show the official indorsement on the back and outside of the ballot, and the ballot must be deposited with this indorsement uppermost, so that it may be seen by the judges. Three states[1] number the ballot, when it is presented for voting, with the voter's number on the poll-book. In Colorado a black square is placed in the upper left-hand corner below the perforated line, and it is made the duty of the judges or clerks to write the number on the opposite side and paste down the corner which, except in a contested election, is not broken.

4. PENAL SANCTIONS

Various penal sanctions have been added to safeguard the purity of the ballot. These special safeguards usually provide for the punishment of any person who falsely makes, or wilfully alters, multilates, or destroys a certificate of nomination, or a nomination paper, or letter of withdrawal; of the printer or any person preparing the ballots who delivers such ballots to any person other than the officers lawfully entitled to receive the same; of any person who destroys or tears down or removes any nomination list, card of instruction, or specimen ballot; of any person who destroys or removes any supplies or conveniences for the marking of the ballot; of an elector who tries to remove the official ballot from the polling-place before the closing of the polls, or allows his ballot to be seen after he has marked it, or places any distinguishing marks on the ballot, or makes any false statement of his inability to vote; of any person who forges the official indorsement; of any election officer who reveals how an elector votes, or tries to influence him in his decision; or of any person who electioneers within a designated distance of the polling-place.[2]

[1] Texas, 1905, ch. 11 (extra session); Missouri, R.S. of 1909, sec. 5904; Colorado, 1901, ch. 72.

[2] For typical, penal provisions see the West Virginia, Code, 1891, ch. 3; Indiana R.S., 1914; Massachusetts, 1907, ch. 560. A complete list of these safeguards would include the corrupt-practice acts, which are beyond the scope of this thesis.

CHAPTER VI

THE ATTITUDE OF THE COURTS TOWARD THE AUSTRALIAN BALLOT

1. THE CONSTITUTIONALITY OF THE AUSTRALIAN BALLOT

Practically every reform statute has had to run the gantlet of constitutional objections, and the Australian ballot is no exception to this rule; for every important section of this act has been attacked in the courts as being unconstitutional. The state constitutions at the time of the introduction of the Australian ballot commonly had three provisions relating to the conduct of elections: that "elections should be free and equal," that all votes should be by ballot,[1] and that a definition be given of the qualifications of electors.

The term "ballot" or "written ballot" as used had been interpreted by the courts to mean secret ballot. This was the view taken in Vermont in 1832 in the case of *Temple* v. *Mead*.[2] Justice Williams in delivering the opinion of the court said:

> In this country, and indeed in every country where offices are elective, different modes have been adopted for the electors to signify their choice. The most common modes have been, either by voting viva voce, that is, by the elector openly naming the person he designates for the office, or by ballot, which is depositing in a box provided for that purpose a paper on which is the name of the person he intends for the office. The principal object of this last mode is to enable the elector to express his opinion secretly, without being subject to be overawed, or to any ill will or persecution on account of his vote for either of the candidates who may be before the public.[3]

These constitutional provisions, while laying down these general principles of a free, equal, and secret election, are unworkable without legislative action. This was early pointed out by Justice Baldwin in delivering the opinion of the court in *McKune* v. *Wheeler*.[4] "All the efficacy given to the act of casting a ballot is derived from the law-making

[1] Kentucky until 1890 required viva voce voting at state elections.

[2] *Temple* v. *Mead*, 4 Vt. 535.

[3] Accord: *People* v. *Pease*, 27 New York 45 (decision in 1863); *Williams* v. *Stein*, 10 American Rep. 97 (decision in 1871, Indiana case). "The common understanding in this country certainly is, that the term 'ballot' implies secrecy. I have nowhere found a dictum to the contrary," 10 *American Rep.* 99.

[4] *McKune* v. *Wheeler*, 11 California 49.

power, and through legal enactments; and indeed, the Legislature must provide for and regulate the conduct of elections or there can be none." The legislature can accordingly enact laws to make the elective franchise effective, but all regulations so made must be reasonable, uniform, and impartial, and must not subvert or injuriously restrain the right. In *Capen* v. *Foster*[1] Chief Justice Shaw said:

> And this court is of the opinion, that in all cases, where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations, in regard to the time and mode of exercising that right, which are designed to secure and facilitate the exercise of such right, in a prompt, orderly, and convenient manner. Such a construction would afford no warrant for such an exercise of legislative power, as, under the pretence and color of regulating, should subvert or injuriously restrain the right itself.

The enemies of the Australian ballot contended that this statute was not a reasonable regulation of the right to vote, but on the contrary embarrassed, hindered, and impeded the electors in exercising their constitutional right of suffrage, that it established physical and educational qualifications for voting in violation of the Constitution, and prescribed restrictions upon the eligibility to office.[2] The courts took a very liberal view and held that the Australian-ballot law carried out and made the franchise more effective, and by protecting the voter against bribery or intimidation gave each vote its proper weight and influence. In *State* v. *Dillon*[3] (1893) the court in sustaining the Australian ballot said: "There is no doubt in our minds about the right of the legislature to prescribe an official ballot and to prohibit the use of any other." The same view was expressed by the Kansas court in *Taylor* v. *Bleakley*[4] (1895): "The legislature, within the terms of the constitution, may adopt such reasonable regulations and restrictions for the exercise of the elective franchise as may be deemed necessary to prevent intimidation, bribery, and fraud, providing the voting be by ballot, and the person casting the ballot may do so in secrecy." The courts denied that the Australian act hindered or impeded the exercise of the right of suffrage, or added to the constitutional qualifications for

[1] *Capen* v. *Foster*, 12 Pickering 485.

[2] Veto message of Governor Hill, 1889; *Pearson* v. *Supervisors of Brunswick County*, 91 Va. 322; *State ex rel. Brown* v. *McMillan*, 108 Mo. 153.

[3] *State* v. *Dillon*, 32 Fla. 545 (1893). [4] *Taylor* v. *Bleakley*, 55 Kan. 1 (1895).

voting, but was, on the contrary, a reasonable regulation of the method of voting designed to protect the voter. The secret ballot has been sustained in the following states: Massachusetts,[1] New Jersey,[2] New York,[3] Pennsylvania,[4] Illinois,[5] Michigan,[6] Missouri,[7] Florida,[8] Tennessee,[9] Virginia,[10] California,[11] Kansas,[12] Iowa,[13] Montana,[14] and Wyoming.[15]

Objections to the provisions for nominations.—The Australian ballot was objected to on the ground that by limiting the right to have their names printed on the ballot to the nominees of parties of a certain size, or to candidates petitioned for by a certain number of electors, it destroyed equality and freedom in voting and discriminated against voters who were not members of such political parties. This objection was overruled by the courts. In the pioneer case on the subject, *De Walt* v. *Bartley*,[16] the court dismissed this point with the observation: "It follows, if an official ballot is to be used, nominations must be regulated in some way; otherwise the scheme would be impracticable and the official ballot become the size of a blanket. While so regulating it, the act carefully preserves the right of every citizen to vote for any candidate whose name is not on the official ballot, and this is done in a manner which does not impose any unnecessary inconvenience upon the voter." In *Miner* v. *Olin*[17] Chief Justice Field said: "It is plainly impractical to permit on an official ballot the names of every candidate for office which caucuses composed of two or more voters may nominate, and the limitation upon the right of nomination by caucus, contained in the statute, cannot be considered unreasonable, if the provisions of the statute generally are such as the Legislature can constitutionally enact." The same view has been followed in New York, New Jersey, Illinois,

[1] *Miner* v. *Olin*, 159 Mass. (1893).

[2] *Ransom* v. *Black*, 54 N.J. L. 446 (1893).

[3] *People* v. *Shaw*, 133 N.Y. 493; *People* v. *Wappinger Falls*, 144 N.Y. 616.

[4] *De Walt* v. *Bartley*, 146 Pa. St. 529 (1892).

[5] *Sanner* v. *Patton*, 155 Ill. 553 (1895).

[6] *Attorney-General* v. *May*, 99 Mich., 568; *Detroit* v. *Rush*, 82 Mich. 532.

[7] *State* v. *McMillan*, 108 Mo. 153; *Bowers* v. *Smith*, 111 Mo. 45.

[8] *State* v. *Dillon*, 32 Fla. 545.

[9] *Cook* v. *State*, 90 Tenn. 407.

[10] *Pearson* v. *Brunswick County*, 91 Va. 322.

[11] *Eaton* v. *Brown*, 96 Cal. 371.

[13] *Whittam* v. *Zahorik*, 91 Iowa 23.

[12] *Taylor* v. *Bleakley*, 55 Kan. 1.

[14] *Price* v. *Lusk*, 10 Mont. 61.

[15] *Slaymaker* v. *Phillips*, 5 Wyo. 453. In many jurisdictions the law has been declared to be constitutional in an *obiter dictum* of the highest court.

[16] *De Walt* v. *Bartley*, 146 Pa. St. 529.

[17] *Miner* v. *Olin*, 159 Mass. 487.

Michigan, Florida, Missouri, Colorado, and Montana. Similarly, a political party may be compelled to use only a certain method to nominate candidates to be placed on the official ballot.[1]

Objections to the form of the ballot.—The laws of fourteen states prohibit the printing of a candidate's name in more than one place on the ballot. This ruling has been attacked in the courts as being an unwarranted interference with the freedom of elections, and as debarring one party from indorsing the candidates of another except on condition of surrendering its existence as a party and its right to representation upon the official ballot in the future.[2] In the cases of *Murphy* v. *Curry*[3] and *Commonwealth* v. *Martin*[4] the provision that a candidate's name should appear but once upon the ballot was held to be invalid. The courts in a larger number of jurisdictions take the other view and hold that this regulation is within the power of the legislature. If a candidate's name is printed once on the ballot, the individual has ample opportunity to vote for him, and the right of the individual elector is not interfered with, and this is the only constitutional right guaranteed. Party fealty and sentiment and the continued existence of parties are not subjects of constitutional care, while the confusion and uncertainty arising from double printing is a sufficient reason for prohibiting it.[5] A recent decision in Illinois, *People ex rel. McCormick* v. *Czarnecki*, upholds the same principle.[6]

The question has also been raised whether the legislature can validly provide for the election of judicial officers on a separate ballot. This right was upheld in an Ohio case in 1912, *State* v. *Miller*, 99 N.E. Rep. 1078. The courts have also declared that the legislature is competent to provide for the submission of amendments by their titles or a brief description showing their character and purpose.[7]

Objections to the procedure of voting.—There have been a number of objections to the manner of voting provided by the Australian-ballot laws of the several states. The most important of these are: Is it

[1] *Hager* v. *Robinson*, 157 S.W. Rep. 1138.

[2] Dissenting opinion of Justice Winslow in *State ex rel. Runge* v. *Anderson*, 100 Wis. 523.

[3] 137 Cal. 479. [4] 20 Pa. Co. Ct. 117.

[5] *State ex rel. Runge* v. *Anderson*, 100 Wis. 523; *Todd* v. *Election Commissioners*, 104 Mich. 474; *State* v. *Burdick*, 46 Pac. 854; *Hayes* v. *Ross*, 127 Pac. 340; *State ex rel.* v. *Bode*, 55 Ohio St. 224.

[6] *People ex rel. McCormick* v. *Czarnecki*, 107 N.E. 625.

[7] *State* v. *Winnett*, 110 N.W. 1113; *Lovett* v. *Ferguson*, 10 S.D. 44.

within the power of the legislature to grant or deny assistance to electors in marking their ballots? Are the devices for voting a straight ticket by a single mark valid? Can the legislature limit the choice of the electors to the candidates whose names are printed on the ballot?

Among the reasons advanced by Governor Hill, of New York, for vetoing the bill was that the Australian ballot destroyed the secrecy of the ballot for the blind and illiterate, and compelled an avowal of their votes as a condition of exercising the right. This was strongly urged against the ballot, and the claim was set up that such a provision was unconstitutional.[1] The Virginia Supreme Court in overruling this objection said:

> The vote by ballot *ex vi termini* implies a secret ballot. The secrecy of the ballot is a right which inheres in the voter and of which he cannot be lawfully deprived. It must be, however, in some degree subordinate to the right to vote by ballot, of which it is but a part; and the main object, which is the right to vote, must not be defeated by a too rigid observance of the incidental right, which is that of secrecy. A blind man, or a man unable to read, must, in the nature of things, so far compromise the secrecy of his ballot as to invoke and obtain the aid of others in the preparation of his ballot.[2]

In *Rogers* v. *Jacob*[3] the question was squarely presented whether illiterate or ignorant electors can be denied assistance in preparing their ballots. The Kentucky Court of Appeals held that the provision of the Kentucky law of 1888 which required an elector to go to a booth and alone and unaided to mark his ballot violated the constitution requiring all elections to be free and equal, because it deprived a person unable to read and write of a free and intelligible choice, and made free suffrage as to them a matter of chance. This is the only case bearing directly on this point, so the law cannot be taken as settled.

As it was shown in discussing the form of the ballot,[4] a number of states have placed party circles or squares upon the ballot, and an elector can vote for all the candidates of a party by making a single cross (X), while another elector wishing to "split" his ticket may have to mark each candidate separately. Is this an unreasonable discrimination between voters? Upon this point the authorities are equally divided. In *Eaton* v. *Brown*[5] the California court held that the provisions of the law for straight party voting were unconstitutional, as

[1] *Pearson* v. *Brunswick County*, 91 Va. 322.

[2] *Ibid.*; see also *Attorney-General* v. *May*, 99 Mich. 568.

[3] 88 Ky. 502.

[4] See pp. 50–51.

[5] 96 Cal. 371.

tending to disfranchise voters, and as not being just, equal, and uniform in their operation. The same view was taken by the Court of Appeals of New York in the case of *Hopper* v. *Britt*.[1] On the other hand, the provisions for straight party voting have been upheld in Pennsylvania in the case of *Oughton* v. *Black*,[2] and in Utah in the case of *Ritchie* v. *Richards*.[3]

The question has also been raised whether the legislature can limit the choice of the elector to the names that are printed upon the ballot, and deny to him the right to write in the name of any other persons for whom he wishes to vote. The courts are almost unanimous in declaring that the elector cannot be so restricted. In *State* v. *Dillon*[4] the court said: "But the legislature cannot, in our judgment, restrict an elector to voting for some one of the candidates whose names have been printed upon the official ballot." The Supreme Court of Missouri, in *Bowers* v. *Smith*,[5] refused to construe the Australian act as prohibiting the writing in of the names of candidates, and expressed the opinion that such a construction would render the law unconstitutional. The Illinois Supreme Court, in *Sanner* v. *Patton*,[6] and *Schuler* v. *Hogan*,[7] adopted a similar view. There is one decision in which the court asserted that the elector could be restricted in voting to the names printed on the official ballot.[8] The court reasoned that if the elector could write in the names of candidates, bribers could agree with the bribed to write in a certain name, as "John Jones," and thus defeat the secrecy of the act. It was also claimed that to permit the writing in of the names of candidates would defeat the purpose of the law in allowing an opportunity to investigate the character and worth of candidates. The consensus of opinion is decidedly against the South Dakota case.

Three states require all ballots to be numbered before they are deposited in the ballot box and the same number recorded on the poll-book opposite the elector's name. In Missouri and in Colorado this procedure is required by the state constitution, but in Texas, where there is no such constitutional requirement, this provision has been

[1] 96 N.E. Rep. 371.

[2] 61 Atl. Rep. 346.

[3] 14 Utah 345.

[4] *State* v. *Dillon*, 32 Fla. 545.

[5] 111 Mo. 45.

[6] *Sanner* v. *Patton*, 155 Ill. 553.

[7] 168 Ill. 369; see also *Bradley* v. *Shaw*, 133 N.Y. 493; *Taylor* v. *Bleakley*, 55 Kan. 1; *De Walt* v. *Bartley*, 146 Pa. St. 529; *Cook* v. *State*, 90 Tenn. 407; *State* v. *Anderson*, 100 Wis. 573; *Cole* v. *Tucker*, 164 Mass. 486. In most of these cases the court's opinion is *obiter dictum*.

[8] *Chamberlin* v. *Wood*, 56 L.R.A. 187 (South Dakota, 1901).

attacked as unconstitutional. The Supreme Court of Texas, in a case decided in 1893,[1] held the provision to be valid, the court being of the opinion that it protected the public against fraud. The opposite view has prevailed in Indiana, Minnesota, Utah, and Idaho, where it was held that such a provision enabled the ballots to be identified and so violated the secrecy of the ballot.[2] The latter view appears the more convincing and is more in harmony with the spirit of the Australian ballot.

In a number of states there is the provision that ballots not indorsed with the initials of the election officers shall not be deposited in the ballot box or counted. In Washington[3] it was held that this was unconstitutional, since the effect of such a provision would be to debar voters from their constitutional right to vote without fault on their part, but because of the negligence of the election officers. This opinion was denied and clearly refuted by the Nebraska court in the case of *Orr* v. *Bailey*,[4] the court pointing out that the law presumed that the election officers would follow directions. The elector is also charged with a knowledge of the law, and he can see whether the signatures are on the back when he folds the ballot, and that it is or is not an official ballot.

2. THE POLICY OF THE COURTS IN INTERPRETING THE BALLOT LAWS

While it is impossible to reconcile the decisions of the courts in the various states, as a general rule they have liberally construed the election laws in aid of the right of suffrage, and have respected the choice of the electors unless expressed in disregard of mandatory safeguards.[5] In determining whether a provision should be held to be mandatory or directory, two rules have been followed: First, there is a tendency to regard as mandatory acts demanded of the elector, but to view with greater leniency acts wholly required of the election officers unless they are essential to the purity of election. This rule was stated by the Washington court as follows:

> The individual may well be called upon to see that the requirements of the law applying to himself are complied with before casting his ballot, and if he should wilfully or carelessly violate the same, there would be no hardship or

[1] *State* v. *Connor*, 86 Tex. 133.

[2] *Williams* v. *Stein*, 38 Ind. 89; *Brisbin* v. *Cleary*, 26 Minn. 107; *Ritchie* v. *Richards*, 14 Utah 345; *McGrane* v. *County of Nez Perces*, 18 Idaho 714.

[3] *Moyer* v. *Van De Vanter*, 12 Wash. 377.

[4] *Orr* v. *Bailey*, 80 N.W. 495; *Lorin* v. *Seitz*, 8 N.D. 404; *Miller* v. *Schallern*, 8 N.D. 395; *Kirkpatrick* v. *Deegan*, 53 W.Va. 275.

[5] *Nance* v. *Kearbey*, 251 Mo. 374.

injustice in depriving him of his vote; but if, on the other hand, he should in good faith comply with the law on his part, it would be a great hardship were he deprived of his ballot through some fault or mistake of an election officer in failing to comply with a provision of the law over which the voter had no control.[1]

Secondly:

If the law itself declares a specified irregularity to be fatal, the courts will follow that command irrespective of their views of the importance of the requirement. In the absence of such declaration, judiciary endeavor as best they may to discern whether the deviation from the prescribed forms of law had or had not so vital an influence on the proceedings as probably prevented a free and full expression of the popular will. If it had, the irregularity is held to vitiate the entire return; otherwise it is considered immaterial.[2]

Nominations.—The courts have been frequently asked to interfere where there is a nomination contest, but they have shown a great reluctance to do so. That is due in part to a feeling that this is a political question and not one that the courts should handle.[3] Secondly, the right of a candidate to have his name placed upon the ballot is entirely of legislative creation, and if the law subjects that right to the decision of a certain tribunal, that excludes the courts from jurisdiction except in the case of fraud.[4] The tribunal given jurisdiction may be an administrative body, or the courts, or in the case of party candidates it may be the designated party authorities, as the state committee or state convention.[5] Where an administrative officer is without authority to decide which of two rival factions rightfully represents the party, the courts have interfered to compel the secretary of state to certify both lists of nominees.[6]

Form of the ballot.—While the use of the official ballot is mandatory, mistakes in the form or dimensions of the ballot will be considered directory, such provisions not being considered essential to the purity

[1] *Moyer* v. *Van De Vanter*, 12 Wash. 377, at 383.

[2] *Bowers* v. *Smith*, 111 Mo. 45: at 61; accord: *Parvin* v. *Wimberg*, 130 Ind. 561; *Barnes* v. *Board, etc.*, 51 Miss. 305; *Ledbetter* v. *Hall*, 62 Mo. 422; *Slaymaker* v. *Phillips*, 5 Wyo. 453; *Gilleland* v. *Schuler*, 9 Kan. 569.

[3] *Phelps* v. *Peper*, 48 Neb. 724.

[4] *Miller* v. *Clark*, 62 Pac. 664; *People* v. *Rose*, 211 Ill. 249.

[5] *State* v. *Houser*, 100 N.W. Rep. 964; *People* v. *Dist. Ct.*, 74 Pac. 896; *Moody* v. *Trimble*, 58 S.W. 504; *Burke* v. *Foster*, 36 So. 32; *Fernbacker* v. *Roosevelt*, 90 Hun 441; *In re Fairchild*, 151 N.Y. 359.

[6] *Shields* v. *Jacobs*, 88 Mich. 164; *People* v. *Dist. Ct.*, 18 Colo. 26.

of elections. An elector will not be disfranchised by using an official ballot which through the fault of the election officers does not conform to the statute prescribing the size of the ballot, quality and color of paper, character of the type, or color of the ink.[1] Neither will he be disfranchised if the county clerk included unauthorized names on the ballot;[2] nor because the ballot does not state the political affiliations of the candidates;[3] nor because the names of all independent candidates are not printed in one column as required by statute;[4] nor because of the failure of the county clerk to publish the names of candidates in the manner required by law;[5] nor because the names of certain candidates are printed under the wrong party device.[6] But if objections to the form of the ballot are made before the election, the statutory requirements will be held mandatory.[7]

The statutory provisions relating to the indorsement of the ballot are considered by the courts to be essential to the purity of elections, and are held to be mandatory. Justice Phillips in delivering the opinion of the court in *Kelly* v. *Adams* said:

> The evidence shows that this ballot had no indorsement to show that it was an official ballot provided in accordance with the law. To ignore this provision and allow ballots to be counted which do not contain the official indorsement would authorize the voting of ballots that might have been surreptitiously obtained or copied, and one of the purposes of the Ballot law be entirely frittered away and the door opened for fraud. The absence of the official indorsement would have been sufficient cause for the rejection of this ballot.[8]

Although the indorsement of the initials of the judges or poll clerks is mandatory, the requirement that the initials be indorsed in a particu-

[1] *Short* v. *Gouger*, 130 S.W. 267.

[2] *Bowers* v. *Smith*, 111 Mo. 45; accord: *Lindstrom* v. *Manistee County*, 94 Mich. 467; *State* v. *Walsh*, 62 Conn. 260; *Fields* v. *Osborne*, 60 Conn. 544; contra: *Price* v. *Lush*, 10 Mont. 61.

[3] *State* v. *Norris*, 37 Neb. 299.

[4] *Murphy* v. *Battle*, 155 Ill. 182.

[5] *Atkinson* v. *Lay*, 115 Mo. 538; *Allen* v. *Glynn*, 17 Colo. 338; *People* v. *Avery*, 102 Mich. 572.

[6] *Allen* v. *Glynn*, 17 Colo. 338.

[7] *Baker* v. *Board, etc.*, 68 N.W. 752.

[8] *Kelly* v. *Adams*, 183 Ill. 193; accord: *Kirkpatrick* v. *Board of Canvassers*, 44 S.E. 465; *Slaymaker* v. *Phillips*, 5 Wyo. 453; *McKay* v. *Minner*, 154 Mo. 608; *Perkins* v. *Bertrand*, 192 Ill. 58; *Kelso* v. *Wright*, 110 Iowa 560; *Grubb* v. *Turner*, 259 Ill. 436; *Hanscom* v. *State*, 31 S.W. 547; *Miller* v. *Schallern*, 79 N.W. 865; *Orr* v. *Bailey*, 59 Neb. 128; contra: *King* v. *State*, 70 S.W. 1019; *Truelsen* v. *Hugo*, 91 N.W. 434.

lar place is directory.[1] It has also been held that the provision requiring the initials of two judges of opposite parties is directory only, and in the absence of fraud a ballot may be counted although the initials indorsed thereon were those of two judges of the same party.[2] The indorsement must be made by the judge's own hand. He can neither authorize others to sign his name, nor can he use a rubber stamp.[3] If the statute requires the initials of two judges, ballots bearing only one judge's signature must be rejected.[4] Where the law provides that all ballots shall be numbered, such a provision is mandatory and ballots not so numbered cannot be counted.[5]

Marking the ballot.—The provisions of the law relating to the marking of the ballot are generally held to be mandatory, because to permit any other mark than the one provided by law would make possible the use of distinguishing marks, and thus rob the ballot of its secrecy. Under this rule the question "whether a ballot should be counted does not depend solely upon the power to ascertain and declare the choice of the voter, but also upon the expression of that choice in the manner provided by statute."[6] Ballots have been declared void in whole or part if the cross was placed on the wrong side of the name of a candidate;[7] or if the cross was placed above or below the candidate's name instead of in the appropriate square; or where the cross did not touch the circle or square.[8]

In some jurisdictions the courts feel that this rule should be relaxed in order not to disfranchise innocent voters. In *Mauck* v. *Brown*[9] the Nebraska court held that it was not essential to a valid ballot that the cross be in the circle or square. If the cross is either to the right or

[1] *Horning* v. *Burgess*, 77 N.W. 446; *Jones* v. *State*, 55 N.E. 229; *Parvin* v. *Wimberg*, 130 Ind. 561.

[2] *State* v. *Gay*, 59 Minn. 6.

[3] *Rhodes* v. *Driver*, 64 S.W. 272; *Arnold* v. *Anderson*, 93 S.W. 692; *Berryman* v. *Megginson*, 82 N.E. 256.

[4] *McKay* v. *Minner*, 154 Mo. 608; *Orr* v. *Bailey*, 59 Neb. 128.

[5] *Ledbetter* v. *Hall*, 62 Mo. 422; *West* v. *Ross*, 53 Mo., 350; *State* v. *Connor*, 86 Tex. 133.

[6] *Whittam* v. *Zahorik*, 91 Iowa 23.

[7] *Apple* v. *Barcroft*, 158 Ill. 649; *Patterson* v. *People*, 65 Ill. Ap. 651; *Curran* v. *Clayton*, 29 Atl. 930; *State* v. *Sadler*, 25 Nev. 131; *Howser* v. *Pepper*, 8 N.D. 484; *McKittrick* v. *Pardee*, 8 S.D. 39; *Vallier* v. *Brakke*, 7 S.D. 343.

[8] *Hennessy* v. *Porch*, 247 Ill. 388; *Curran* v. *Clayton*, 29 Atl. 930; *Sego* v. *Stoddard*, 136 Ind. 297; *McKittrick* v. *Pardee*, 8 S.D. 484; *Parvin v. Wimberg*, 130 Ind. 561.

[9] *Mauck* v. *Brown*, 59 Neb. 382.

left of, and opposite to, the name of a candidate, it may indicate the choice of the elector. In a straight party ticket, if the cross is within the space containing the circle, although not touching the latter, it is sufficient to indicate the choice of the voter. The same view has been followed in Colorado[1] and Washington.[2]

The question of what constitutes a valid cross has been the occasion of much litigation. Almost every mark which a voter could make or neglect to make has been discussed in the state courts. Although the statutes regulating the manner in which a voter shall indicate his choice are held mandatory, yet through all the decisions is the theory that a voter should not be disfranchised if he has made an honest effort to comply with the requisites of the law.[3] It is fully realized that many electors through carelessness, nervousness, or physical disability do not make the conventional cross mark (X) in anything like perfect form. So it has been held that any mark which apparently was honestly intended for a cross mark and nothing else must be given effect as such.[4] Thus cross marks in the form T or  were held to be valid in Illinois.[5] In Rhode Island a hook and a Y-shaped mark were held legal within the statute. Marks consisting of two downward strokes and one horizontal have been allowed.[6] But it is not a valid cross where two lines do not cross one another;[7] nor where there is a straight line at the left of a candidate's name; nor where there are one or more circles within the circle at the head of the ticket.[8] Wisconsin has gone farther than any of the other states in defining what constitutes a valid cross mark. The law declares that the voter may indicate his intention by an X or any other mark as ∫, \, V, O, −, I, +.[9] Apparently any mark would be valid in Wisconsin.

While the statutes provide that certain instruments shall be used in marking the ballot, these provisions are held to be merely directory. But the law can be worded in such a way that the courts must regard it as mandatory, in which case the elector must mark his ballot in the

[1] *Young* v. *Simpson*, 42 Pac. 666.

[2] *State ex rel Orr* v. *Fawcett*, 17 Wash. 188.

[3] See *Cyclopedia of Law and Procedure*, XV, 353.

[4] *Pennington* v. *Hare*, 60 Minn. 146; *In re Middendorf*, 4 Pa. Dist. R. 78; *Parker* v. *Orr*, 158 Ill. 609; *Ogg* v. *Glover*, 83 Pac. 1039.

[5] *Parker* v. *Orr*, 158 Ill. 609.

[6] *Houston* v. *Steele*, 98 Ky. 596.

[7] *Apple* v. *Barcroft*, 158 Ill. 649.

[8] *Vallier* v. *Brakke*, 7 S.D. 343.

[9] *Wisconsin Laws*, 1891, ch. 379, as amended by the laws of 1899, ch. 349.

manner pointed out by the act.[1] The voter may not use a paster containing the names of his candidates unless the statute so provides.[2]

Connected with the question of what constitutes a valid indication of an elector's intention is the question of what is a distinguishing mark, which is everywhere prohibited by statute. It is impossible to state any rule applicable to all cases. "The intent of the voter must be determined by an inspection of the ballot, and upon whether there is any mark thereon by which it may be identified, irrespective of any conjectures as to the purpose or circumstances under which the mark was made."[3] What constitutes an identifying mark is a question of fact rather than of law, and the decisions of the courts differ. The following marks have been held to be distinguishing marks and to invalidate the ballot: names or initials on the ballot;[4] a mark resembling an imperfect circle, or a small circle, within the circle at the head of the ticket;[5] ballots marked with a star instead of a cross;[6] a number of ballots folded alike in a striking and unusual manner;[7] a cross in a vacant space not opposite the name of a candidate, or before or after the words "no nomination";[8] a diagonal black line in one of the spaces for writing in the name of candidates;[9] a stamp in the blank space which contained no names;[10] expressions written on the ballot, as "rats" and "don't want no king";[11] mark resembling a figure 4, or any mark other than a cross;[12] writing in the blank column the names of candidates already printed on the ballot;[13] marks made by the voter in attempting to correct his own errors by endeavoring to erase with a rubber or by striking the pencil through the mark;[14] ballots marked with the word

[1] *Cyclopedia of Law and Procedure*, XV, 356.

[2] *People* v. *Shaw*, 64 Hun 356; *De Walt* v. *Bartley*, 146 Pa. St. 529; *Roberts* v. *Quest*, 173 Ill. 427.

[3] *People* v. *Campbell*, 138 Cal. 11, at 20.

[4] *Bloedel* v. *Cromwell*, 104 Minn. 487; *Pennington* v. *Hare*, 60 Minn. 146; *Tandy* v. *Lavery*, 194 Ill. 372.

[5] *Grubb* v. *Turner*, 102 N.E. 810; *People* v. *Bourke*, 63 N.Y. Suppl. 906.

[6] *Coulehan* v. *White*, 95 Md. 703; *Sweeney* v. *Hjul*, 23 Nev. 409.

[7] *State* v. *Walsh*, 62 Conn. 260.

[8] *People ex rel. Feeny* v. *Board, etc.*, 156 N.Y. 36; *People* v. *Campbell*, 138 Cal. 11.

[9] *People* v. *Parkhurst*, 53 N.Y. Suppl. 598.

[10] *Sego* v. *Stoddard*, 136 Ind. 297.

[11] *State* v. *Fawcett*, 17 Wash. 188.

[12] *Durgin* v. *Curran*, 77 Atl. 689.

[13] *People ex rel. Feeny* v. *Board*, 156 N.Y. 36.

[14] *Ibid.*; *People* v. *Campbell*, 138 Cal. 11; *Vorhees* v. *Arnold*, 108 Iowa 77; *State* v. *Sadler*, 25 Nev. 131.

"yes" in the party square;[1] ballots with a cross in the Republican circle and irregular marks across the face of four of the tickets;[2] ballots with a cross in the Democratic circle and horizontal lines through the other five circles.[3]

On the other hand, marks like the following have been held not to be fatal: a straight diagonal line which was apparently part of a cross which the voter forgot to complete;[4] a dotlike mark made close to the end of a cross;[5] a ballot with a cross unusually heavy;[6] two crosses in the party circle;[7] a cross mark in each column in which a candidate's name appears;[8] or a number of crosses in the voting space opposite the candidate's name;[9] writing by a voter on his ballot of the party affiliation of a candidate whose name he had also written in.[10]

[1] *Grubb* v. *Turner* 102, N.E. 810.
[2] *Ibid.*
[3] *Ibid.*
[4] *People* v. *Parkhurst*, 53 N.Y. Suppl. 598.
[5] *Ibid.*
[6] *State* v. *Peter*, 21 Wash. 243.
[7] *Tandy* v. *Lavery*, 194 Ill. 372; *Houston* v. *Steele*, 98 Ky. 596
[8] *Parker* v. *Hughes*, 64 Kan. 216; *People* v. *Richmond Co.*, 50 N.E. 425.
[9] *State* v. *Fawcett*, 17 Wash. 188; *People* v. *Parkhurst*, 53 N.Y. Suppl. 598.
[10] *Jennings* v. *Brown*, 114 Cal. 307.

CHAPTER VII

SUMMARY AND CONCLUSION

During the nineteenth century the electorate in the United States was altered both in character and in numbers. The increase in the number of the voters was due: first, to a great increase in the native population; secondly, to a large immigration from Europe; thirdly, to a removal of many previously existing disqualifications for voting, which reached its culmination in the enfranchising of the negroes. The character of the electorate suffered many changes. In the virtual establishment of manhood suffrage many classes were included who had not developed to such a degree that they could be intrusted with the ballot. The population, which had been rural, was modified by the growth of a large urban class. These great political and industrial changes put a heavy strain on our election machinery. Party spoils, also, became increasingly attractive and led to a wider use of illegitimate means to win elections. The electoral machinery which had been sufficient for the older order proved inadequate. Even before the Civil War there were complaints made that the judgment of the electorate was being subverted by ballot-box stuffing, bribery, and intimidation. In 1851 Massachusetts and Rhode Island tried to secure relief by the passage of the official-envelope law, but the attempt was premature, and the compulsory use of these envelopes was soon abandoned. The absorbing interest in slavery and the war diverted public attention from the canker which had attacked the very roots of democratic government.

In the period of corruption following the Civil War the ballot was made the instrument of even greater abuse. The party bosses controlled the nomination of candidates, prepared and distributed the ballots, conducted the campaign, and often secured the election of their party slate by means of bribery and intimidation. This condition became so notorious that the state legislatures interfered at last, and an attempt was made to curb the grosser forms of abuse. The result is seen in a series of legislative acts. Fifteen states provided that the ballot should be printed on white paper, and that type of a certain size and ink of a particular color should be used. California and Oregon tried to secure a uniform weight and color of paper by requiring the ballots to be printed

on paper furnished by the secretary of state. Five states regulated the size of the tickets. These attempts, however, failed to accomplish the desired result, and public opinion finally demanded the abolition of this system and the adoption of a secret official ballot.

The defects of the unofficial ballot can be summarized as follows: first, it was not secret; secondly, there were no means provided by law for the printing and the distributing of the ballots; thirdly, there was no way of protecting the public against eleventh-hour nominations which made an exposure of the candidates impossible; fourthly, the necessarily large expense deterred independent candidates; fifthly, the noise and confusion about the polls was distracting.

The Australian ballot differed from the unofficial ballot in the following particulars: first, all ballots are prepared by state officials and none but the official ballot can be used in public elections; secondly, the manner by which candidates can be nominated is regulated by statute; thirdly, ballots are distributed only by sworn election officers stationed within the polling-place on the day of election; fourthly, the form of the ballot is prescribed by law and all ballots are uniform in any precinct; fifthly, ballots must be marked by the elector in secret, and deposited so that their contents cannot be seen; sixthly, the entire process of the preparation, casting, and counting of the ballots is regulated by statute, and any violation or abuse of this law can be corrected by an appeal to the courts. This judicial control is one of the great differences of the official ballot over the former system.

Every state which has adopted the Australian ballot requires the exclusive use of the official ballot in public elections. Although Governor Hill demanded strenuously the equal right of private organizations to furnish ballots, the use of ballots furnished only by the state is seldom disputed. It is accepted also, practically without question, that the ballots shall be distributed only by sworn clerks stationed within the polling-place on the day of election, and that no ballots shall be taken from the room before the closing of the polls. Delaware has taken, however, a reactionary step by permitting an elector to obtain a ballot in advance of the election from the chairmen of the various political organizations.

The manner of nominating candidates to be placed upon the official ballot has undergone important changes. In the early Australian-ballot acts a party of sufficient size could generally nominate candidates by a primary, caucus, or convention. Then came the period of the mandatory primary, and later, the direct primary. In those states

which have adopted the compulsory direct primary the convention, if it exists at all, is only supplementary to the primary law.

The form of the ballot is yet a subject of controversy. The blanket type is almost universal. Missouri is in fact the only state which has abandoned the blanket form for the separate-party ballots. But there is a great controversy between the office-group and the party-column arrangement. At first the office group was the more popular, but from 1891 to about 1900 the party column surpassed its rival. Since 1900 the office group, or Massachusetts form, is again gaining in popularity, but it is impossible to predict the final result. The party circle and emblem are being attacked, and should be abolished. There is little excuse for the party circle and emblem. They are a concession to the ignorant voter, and tend to divert the attention from present-day issues to past traditions. Although the circle and emblem are popular with the party bosses, because they insure a large party vote, they are detrimental to the best public interest.

There is no doubt, however, that our ballot is too long and unwieldy. There are so many officers to be elected that even the most conscientious electors cannot possibly know the merits of all the men, and the average voter knows very few of those for whom he votes. The result is that the citizen votes only for the men he knows, or else he blindly votes for the party slate. The demand of the reformer is stated by Jesse Macy (see article in the *Cyclopedia of American Government*): "Make the ballot so short and so important that the average citizen must know whom he elects, and then hold those chosen responsible by good appointments to fill all the other state offices. Better centralize power in the hands of a few known and responsible office-holders than leave it in the hands of unauthorized party committees. The people can usually call the former to account, but the latter, never."

The question is sometimes asked, Has the Australian ballot been a success? To answer this question accurately would require a study of the operation of the ballot in each state by persons familiar with the conditions of the state. It is safe to say, however, that the results achieved by this reform have not measured up to the extreme views of some of its most zealous friends. But it cannot be denied that the Australian ballot has been a decided advance over former systems. It has not made bribery or intimidation impossible, but it has lessened the amount of bribery by removing the knowledge, or proof, that the bribe-taker has delivered the goods. But a number of ways have been found to circumvent the safeguards of the law. One method was to

bribe opposition voters to stay away from the polls. Another is known as the "Tasmanian dodge," or "endless chain." By some method or other an official ballot is removed from the polling-place and is marked by a vote-purchaser on the outside. This marked ballot is given to a bribed elector who votes that ticket and brings back the one given to him by the ballot clerk unmarked. This process is repeated over and over again, and so gets its name of the endless chain. Probably the most effective method of defeating the Australian ballot is by means of the "assisted vote." By agreement every corrupt elector upon entering the voting-booth claims assistance in preparing his ballot. His ticket is then marked by an election officer, who is in collusion with the purchaser, and the elector is given something in the nature of a token as a proof that the goods have been delivered. The elector can obtain his money upon surrendering his token. As Mr. Kennan shows in his description of Mr. Addicks' methods in Delaware (*Outlook*, February 21, 1903), this system destroys the secret ballot. The last resort of a corrupt machine to stave off defeat is in the counting of the votes. The result of the election may be entirely changed by declaring opposition votes to be void because of some alleged defect in the ballot, or by a deliberate miscounting of the total votes for the respective candidates. The laws compelling election boards to be bipartisan has failed to prevent this last abuse. It is of course obvious that the selection of honest officials is an essential of the Australian system or any other system for that matter. The trouble with all of the foregoing methods of defeating the Australian ballot is with the officials and not with the system itself.

In conclusion, it may be said that the Australian ballot is a decided advance toward a realization of true democratic government. While not completely destroying the evils of the unofficial ballot, it mitigated those evils. It has cleared away the obstacles which formerly prevented a free expression of the public will. It has made good government possible if the electors really want it.

APPENDIXES

APPENDIX A

THE TEXT OF THE ORIGINAL AUSTRALIAN BALLOT ACT

PROVINCE OF SOUTH AUSTRALIA—ACTS OF COUNCIL, 1857–1860

No. 12

An Act to repeal certain Acts relating to the election of Members to serve in the Parliament of South Australia, and to provide for the election of such Members. (Assented to, 27th January, 1858.)

Preamble

WHEREAS it is expedient to repeal the Act No. 10 of 1855–6, "To provide for the Election of Members to serve in the Parliament of South Australia," and the Act No. 8 of 1856, "To amend an Act to provide for the election of Members to serve in the Parliament of South Australia," also the Act No. 32 of 1855–6, "To make further provision for the election of Members to serve in the Parliament of South Australia": Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

Nos. 10 and 32, 1855- and No. 8, 1856, repealed

1. From and after the passing of this Act the three before-mentioned Acts, shall be and the same are hereby repealed, except in so far as the same may repeal any Act or part of any Act.

Province to form one electoral district for Legislative Council, and seventeen for House of Assembly

2. For the purpose of electing Members of the Legislative Council, the said Province shall form one electoral district; and the several electoral districts specified in Schedule A, to this Act annexed, shall form electoral divisions of such district; and for the purpose of electing Members of the House of Assembly, the said Province shall be divided into seventeen electoral districts, which shall have the names and boundaries, and shall return the number of Members specified in the said Schedule.

Appointment of Returning Officer

3. The Governor shall, from among the persons resident in the district, appoint a proper person to be the Returning Officer of each electoral district; and in case of absence from the Province, death, sickness, or other cause disabling any Returning Officer from acting, the Governor may at any time appoint some other person to act in the stead of such Returning Officer; and

every such appointment shall be valid, until such appointment shall be cancelled, and some other person appointed to be Returning Officer; and every Returning Officer may appoint such clerks, deputies, and other subordinate officers as may be necessary to carry this Act into execution.

Proviso in case the Returning Officers being candidates, or other deficiency of officers

4. No candidate for election, in any electoral district, shall be competent to act as a Returning Officer at such election: and in the event of any inability or incompetency of any person appointed to act as Returning Officer, or to perform any office or duty in execution of this Act, the Governor may appoint such other persons as he may deem fit, to perform such office or duty.

Returning Officer for House of Assembly to be Deputy Returning Officer for Legislative Council

5. The Returning Officer for each electoral district shall be a Deputy Returning Officer for the same, as an electoral division, for the election of Members to serve in the Legislative Council; and shall, within such division, have and exercise all the powers and perform the duties of a Returning Officer, with regard to the formation and revision of lists of voters, and claimants and of the electoral roll, and of all matters relating or incident thereto, and the appointment of clerks and deputies, and other officers.

Voting places

6. For each of the electoral districts and divisions, there shall be, within such district or division, such voting places as mentioned in Schedule B, to this Act annexed, and no other.

Forms of notices of claim to be left with electors

7. Between the first day of March and the thirty-first day of March in every year the Town Clerks of Corporations, and Clerks appointed by the District Councils under Ordinance No. 16, 1852, in such part of any electoral district or division within the respective limits of any Corporation and District Council, and in such part of any such district or division without such limits, then the police shall cause to be left at the residence of every person within the district, a notice according to the form of Schedule C, to this Act annexed, requiring all persons entitled to vote in the election of Members of the Legislative Council and House of Assembly, to fill in and sign the notice of their claim to be placed on the electoral roll for either or both Houses of Parliament, as they may be entitled; and the occupier is hereby required to give notice to all male persons, of the age of twenty-one years or upwards, resident at such dwelling-house, of the receipt by him of such form of claim, and that they are required to fill up and sign the same; and every such clerk shall receive for such service the sum mentioned in Schedule I to this Act annexed.

Notice to voters to be given by Returning Officer of the Province of time of sending in notice of claim

8. Between the first day of March, and the seventh day of March in every year, the Returning Officer for the Province shall cause to be published a notice, in the South Australian Government Gazette, and in two newspapers published in Adelaide, notifying to all persons, entitled to vote in the election of Members to serve in the Legislative Council and House of Assembly respectively, that the notice aforesaid is about forthwith to be delivered to the occupier of every dwelling-house, and that all persons claiming to be inserted in any electoral list, must insert their names in the Schedules of such notices as thereby and therein required, or they will not be entitled to vote at any election during the ensuing year; and every person to whom the said notice shall be addressed shall forward the same, within seven days from the receipt thereof, either personally or through the Post Office, as stated in the said notice, under a penalty of not more than Twenty Shillings, to be recovered in a summary way before two Justices of the Peace of the Province.

Lists to be made out and left at certain places for inspection

9. The Returning Officer of every electoral district or division shall, on or before the first day of May in every year, make out a list to be called the electoral list, having the names in such list arranged in alphabetical order, under the headings of the subdivisions of the district into voting places, according to the form of the Schedule hereto annexed, marked D, of all persons resident within his division who may have forwarded their claims to him in manner aforesaid, as claiming to be entitled to vote in elections for Members of the Legislative Council, and a like list of all persons claiming to be entitled to vote in elections for Members of the House of Assembly for such district; and shall sign, date, and certify such list to be correct, and shall cause the same to be either printed or fairly and legibly transcribed and forwarded (by post) to the place of meeting of every Corporation or District Council within the electoral district to which the said list refers, and also to any police station in any such district beyond the limits of a Corporation or District Council; and the said lists shall be kept open to public inspection at all reasonable hours at such places respectively until the twenty-first day of the same month of May.

Claim of persons to have their names inserted on electoral lists
List of claimants
List of persons objected to

10. Any person, having made such claim as aforesaid, whose name shall not have been inserted in any such electoral list, and who shall claim to have his name inserted therein, shall, on or before the twenty-first day of May, give notice thereof to the Returning Officer, in the form of the Schedule to this Act annexed, marked E, or to the like effect; and any person whose name shall have been inserted, or who shall claim to have his name inserted, in any such electoral

list may object to any other person as not entitled to have his name retained therein; and any person so objecting shall, on or before the twenty-fifth day of May, give, or cause to be given, to the Returning Officer, and also the person objected to, or leave at his place of abode notice thereof, in writing, according to the form in the Schedule to this Act annexed, marked F, or to the like effect; and the said Returning Officer shall include the names of all persons so claiming to be inserted on each electoral list, in separate lists, according to the form of the Schedule to the Act annexed, marked G; and the names of all persons objected to in separate lists, according to the form of the Schedule to this Act marked H; within four days from the receipt of such last-mentioned claims; and shall cause copies of such several lists to be forwarded to the places aforesaid four days prior to the holding of the Annual Court of Revision, as hereinafter provided; and the said Returning Officer shall likewise keep separate lists of the names of all persons so claiming as aforesaid, and also separate lists of the names of all persons so objected to as aforesaid, to be perused by any person without payment of any fee, at all reasonable hours during such four days (Sundays excepted), and shall allow any person desiring the same to take a copy of each of such lists, on payment of a sum of One Shilling for each copy so taken.

Returning Officer may object

11. The Returning Officer of every electoral district or division may object to any person as not entitled to have his name retained on any electoral list, giving, or causing to be given, such notice of objection as aforesaid; and he is hereby required to object, in the case of all persons whom he shall have reason to believe are not entitled to be retained on the said lists.

Notice of objection may be sent through the post.

12. It shall be sufficient, in every case of notice to any person objected to in any electoral list, if the notice, so required to be given as aforesaid, shall be sent by post, the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent, at his place of abode as described in the said list; and when any person shall be desirous of sending any such notice of objection by the post he shall deliver the same, duly directed, open, and in duplicate, to the postmaster of any post office within such hours as shall have been previously given notice of at such post office, and under such regulations with respect to the registration of such letters, and the fee to be paid for such registration (which fee shall, in no case exceed Twopence over and above the ordinary rate of postage) as shall from time to time be made by the Postmaster-General in that behalf; and in all cases in which such fee shall have been duly paid, the postmaster shall compare the said notice and duplicate, and, on being satisfied that they are alike in their address and their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp

of the said post office; and the production by the party who posted such notice, of such stamped duplicate shall be evidence of the notice having been given to the person, at the place mentioned in such duplicate, on the day which such notice would, in the ordinary course of post, have been delivered.

Courts of Revision

13. On some day between the first day of June and the thirtieth day of June in every year a Revising Officer to be appointed for that purpose by the Governor, at such reasonable remuneration as he may deem fit, shall, at such place within each electoral district as may be for that purpose appointed by Proclamation published in the South Australian Government Gazette, hold an open Court for the revision of such electoral lists, and may continue such Court by adjournment; and the Returning Officer shall, at the opening of the Court, produce the electoral rolls existing for the Legislative Council and House of Assembly respectively, and a copy of the lists of the persons so claiming, and of the persons so objected to, made out in the manner aforesaid; and all collectors of rates and other persons shall, on being thereto summoned, attend the Court, and shall answer upon oath all such questions as the Court may put to them, or any of them touching any matter necessary for revising such electoral lists; and the said Court shall insert in such lists respectively, the name of every person who, having claimed, shall make proof to the satisfaction of the Court that he is entitled to be inserted therein, and shall retain on the said lists the names of persons to whom no objection shall have been duly made, and shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so objecting shall appear by himself, or by some one on his behalf, in support of such objection; and shall have power to change the voting place of any elector on his application in person, or by some one duly authorized on his behalf, and shall assign to every elector (who shall have failed himself to elect) a voting place; and when the name of any person inserted in any electoral list shall have been duly objected to, and the person objecting shall appear by himself, or by some one on his behalf, in support of such objection, the Court shall require proof of the qualification of the person so objected to, and in case the qualification of such person shall not be proved to the satisfaction of the Court, the said Court shall expunge the name of every such person from the said list, and also expunge therefrom the name of every person who shall be proved to the Court to be dead, and shall have power, on the personal application of any elector, to change the description of the qualification of the elector, as appearing on the electoral list, without altering the date of registration, provided that the elector shall satisfy the Court, on oath, that the qualification proposed to be substituted is sufficient in law to entitle such person to vote, and shall correct any mistake, or supply any omission which shall be proved to the Court to have been made in any such list, in respect of the name or place of abode of any person who shall be included therein, or in respect of the local description of his property; and the

Revising Officer shall, in open Court, write his initials against the names struck out or inserted, and against any part of any list in which any mistake shall have been corrected, and shall sign his name to every page of the list so settled.

Persons making frivolous claims or objections to pay costs

14. If in any case it shall appear to the Court that any person shall have made or attempted to sustain any frivolous and vexatious claim, or objection, to have any name inserted or retained in any roll of persons entitled to vote, it shall be lawful for such Court, in its discretion to make such order as may be fit, for the payment by such person of the costs, or any part of the costs of any person, in resisting such claim, or objection, such order being in writing, and specifying the sum (such sum not to exceed Ten Pounds) and by and to whom, and when and where to be paid.

Provisions in certain cases of change of abode

15. Where any person whose name appears on any electoral list for any district shall be objected to on the ground of having changed his place of abode, the Court may retain the name of such person on the electoral list, provided that such person or some one on his behalf shall prove that he is possessed of the same qualification in respect of which his name has been inserted on such electoral list, and shall also supply his true place of abode which the said Court shall insert in such list.

The electoral roll

16. The Returning Officers of electoral districts or divisions shall keep the electoral lists so revised and signed as aforesaid, and shall cause each of the same to be fairly and truly copied into an alphabetical list in a separate book, to be called the electoral roll, under the several headings of the subdivisions of such district and division into polling places, and shall insert opposite to every name in the column showing the date of registration, the true date of the holding of the Court of Revision at which the claim was allowed, and shall cause each of such books, together with the electoral lists to be preserved among the records of his office, and shall from time to time produce such book and every future book into which the said electoral roll may be transcribed, and shall transmit a copy of such book, containing the names of persons entitled to vote at elections of Members to serve in the Legislative Council, within fourteen days after each Court of Revision, to the Returning Officer of the Province, forming one electoral district.

Electoral roll to be register of voters

17. The electoral roll shall be the register of persons entitled to vote at any election of a Member or Members to serve in the said Legislative Council or House of Assembly respectively, which shall take place between the last day of December, in the year wherein such register shall have been made, and the

last day of December in the succeeding year: Provided always, that the electoral roll in force for any electoral district, at the time of the last general election of the Province, so far as the same can be ascertained, with any additions subsequently made thereto, and before the passing of this Act, shall be the electoral roll in force until the first day of January, one thousand eight hundred and fifty-nine; and provided further, that the persons whose names were on the said electoral roll have not claimed to have their names inserted thereon.

Power of Courts of Revision

18. Every Court of Revision, shall have power to require any person having the custody of any book containing any rate made within any such electoral district or division, or any part thereof, during that or the preceding year, to produce the said book and allow the same to be inspected at any such Court, and shall have power to administer oaths or affirmations as the case may be to all persons who may be required or tendered to be examined, and any person who shall answer falsely to any lawful question put to him at such examination shall be liable to be prosecuted for perjury.

The Returning Officer to furnish copies of roll

19. The Returning Officer or his Clerk shall furnish copies of any electoral roll to all persons applying for the same on payment of a reasonable price not exceeding Sixpence for every folio of seventy-two words.

Personal attendance of electors not necessary to prove qualification to vote, unless required by the Court

20. No elector claiming to register his vote in any electoral district or division shall be obliged to appear in person to make proof of the nature and sufficiency of his qualification, unless required by the Court at which he shall apply to be registered to attend in person: Provided, that if such personal attendance be rendered requisite on the application of any party objecting as aforesaid, such party, if his objection be disallowed, shall defray such expenses as the Court shall award for claimants' attendance, which expenses so awarded, shall be recoverable in any Court of competent jurisdiction in which the party entitled thereto shall sue for the same.

Writs to be issued by the Governor, and to be returnable to him

21. Writs for the election of members to serve in the said Legislative Council and House of Assembly respectively, shall be issued by the Governor, directed to the Returning Officer of each electoral district, in which writs shall be named the day of nomination for such elections, and in the event of any such elections being contested, the day for taking the votes at the different voting places, and also the day on which such writs shall be made returnable to the said Governor.

Writs issued to supply vacancies only on warrant of the President and Speaker

22. All writs directed to be caused to be issued by the President or Speaker, for the purpose of electing a Member to fill any seat in the Legislative Council or House of Assembly, vacant by the death, resignation, acceptance of office, or other incapacity of any Member, shall be issued by the Governor only, upon the receipt from the President or Speaker of the said Legislative Council or House of Assembly respectively, of a notification of such vacancy.

Form of writs

23. All writs to be issued for the election of Members of the said Parliament under this Act shall be framed in any manner and form which may be necessary and sufficient for carrying the provisions hereof into effect.

Returning Officer and Deputy Returning Officer for Legislative Council, to give notice of writs, &c.

24. Upon the receipt of any writ for the election of Members to serve in the said Legislative Council, the Returning Officer shall endorse thereon the day of receiving the same, and shall, within two days from the receipt thereof, forward a copy thereof to the Deputy Returning Officer for each division of his district; and every Deputy Returning Officer shall, upon the receipt of such copy, endorse thereon the day of receiving the same, and shall, within seven days from the receipt of such copy, give the like notices, and forward the same by post, together with a copy of the electoral roll for the said division to the same places as are hereinafter directed and prescribed with regard to writs for the election of Members to serve in the House of Assembly.

Returning Officer for House of Assembly to give notice of day of nomination and of election

25. Upon the receipt of any writ for the election of Members to serve in the House of Assembly, the Returning Officer shall endorse thereon the day of receiving the same, and shall, within seven days from the receipt thereof, give notice thereof and of the day of nomination and of taking votes fixed therein, and of the chief voting place and other voting places, if any, for taking the votes at such elections, and shall forward such notice by post, together with a copy of the electoral roll, to the places of meeting of every Corporation or District Council within the electoral district, and also to every Police Station in any such district beyond the limits of the Corporations or District Councils.

Booths may be erected or hired for taking votes

26. At every election the Returning Officer, if it shall appear to him expedient for taking votes at such election, may cause booths to be erected, or rooms to be hired and used as such booths, at the several polling places of his district or division mentioned in Schedule B, hereto annexed, and the same shall be so divided and allotted into compartments as to the Returning Officer shall seem most convenient, and shall, before the day fixed for taking of votes, if

there be a contest, cause to be furnished, for the use of each booth, a copy of that portion of the electoral roll containing the names of persons entitled to vote at such voting place of the district or division, and shall under his hand certify such copy to be a true copy.

Returning Officer to preside and appoint deputies to preside at the voting places

27. The Returning Officer of each electoral district shall preside at the election within his district or division, and may appoint a deputy to act for him and take the votes at each voting place: Provided that such deputy be appointed by writing under the hand of the said Returning Officer.

Adjournment of nomination or of voting in case of riot

28. Where the proceedings at any election shall be interrupted or obstructed by any riot or open violence, whether such proceedings shall consist of the nomination of candidates or of the taking the votes, the Returning Officer, or the deputy of any Returning Officer, shall not for such cause terminate the business of such nomination, nor finally close the voting, but shall adjourn the nomination or the taking the votes at the particular voting place at which such interruption or obstruction shall have happened, until the following day, and if necessary shall further adjourn, such nomination or voting, as the case may be, until such interruption or obstruction shall have ceased, when the Returning Officer or his deputy shall again proceed with the business of the nomination or with the taking the votes, as the case may be, at the place at which the same respectively may have been interrupted or obstructed; and the day on which the business of the nomination shall have been concluded shall be deemed to have been the day fixed for the election, and the commencement of the voting shall be regulated accordingly; and any day whereon the voting shall have been so adjourned, shall not as to such place be reckoned the day of taking of votes at such election, within the meaning hereof: and whenever the voting shall have been so adjourned by any deputy of any Returning Officer, such deputy shall forthwith give notice of such adjournment to the Returning Officer, who shall not finally declare the state of the voting, or make Proclamation of the Member chosen, until the voting so adjourned at such place shall have been finally closed, and the boxes containing the votes delivered or transmitted to such Returning Officer.

Candidates not to canvass personally or attend election meetings

29. It shall not be lawful for any candidate for election as a Member of the said Legislative Council or House of Assembly to solicit personally the vote of any elector, or to attend any meeting of electors convened or held for electoral purposes, if such meeting be held within three days of the day appointed for the nomination of candidates for any electoral district, nor until after the poll is taken for the said district; and the attendance of any candidate at any such meeting, or his personal solicitation of the vote of any elector, shall have the same effect as the acts of bribery and corruption hereinafter mentioned.

Mode of nomination

30. Any two electors of any electoral district, may, before the day fixed for nomination, address and forward, or deliver to the Returning Officer of such district, a letter, signed by such two electors, as proposer and seconder of a person to be therein named as a candidate to represent the district; the person, also, proposed as a candidate, signifying his assent, in writing, to act if elected; and on the day of nomination named in writ, the Returning Officer shall attend at noon, at the chief voting place of the electoral district, and shall there read the letter so addressed to him; and if there shall not be a greater number of candidates, so proposed and seconded, and consenting as aforesaid, than are by such writ required to be elected, the Returning Officer shall declare such candidate or candidates to be duly elected, and make his return accordingly; and, in the event of there being more candidates so proposed, and seconded, and consenting as aforesaid, than are by such writ required, the Returning Officer shall give notice, at such chief voting place, of the names of the candidates, and of the names of the persons by whom they have been proposed and seconded, and of the other voting places in his district, and of the day appointed in the writ for the taking of votes and of the time of voting.

Proceedings on the day of election

31. The election of Members of the Legislative Council and House of Assembly, at each voting place shall be held before the Returning Officer or his deputy, and the voting at every election shall commence at nine o'clock in the forenoon, and shall finally close at five o'clock in the afternoon of the same day, and shall be conducted in manner following, that is to say—Every elector entitled to vote, and who shall vote in the election of Members of the Legislative Council or House of Assembly, as the case may be, shall vote at the voting place in the district or division for which his name appears on the electoral roll, and shall present himself to the Returning Officer or his deputy at such voting place, and state his Christian and surname, abode and profession, or occupation; and, in case of voting for a Member of the Legislative Council, the nature of his qualification, and the place where the property or qualification is situated; whereupon the Returning Officer or his deputy shall place a mark against the voter's name on the electoral roll, and hand to such voter a voting paper bearing the initials of the Returning Officer or his deputy, and containing the Christian and surname of each candidate, and a blank square printed opposite to the name of each candidate, with a number corresponding with the order of nomination inserted in such square; and, in the event of two or more candidates being of the same name, the voting paper shall contain the description of each such candidate, in addition to his Christian and surname, and number, and no other matter or thing; and there shall be provided separate apartments, or places forming part of the polling booth, into which the voter shall immediately retire, and there, alone and in private, without interruption, indicate the name of the candidate for whom he intends to vote, by making a

cross within the square opposite the name of such candidate, and shall then fold the same paper and immediately deliver it so folded to the Returning Officer or to his deputy, who shall forthwith publicly, and without opening the same, deposit it in a box to be provided for that purpose; and no voting paper so deposited in any box shall, on any account, be taken therefrom, unless in the presence of scrutineers after the close of the election: Provided, that no voting paper shall be received unless it be so folded as to render it impossible for the Returning Officer, or any other person to see for what candidate or candidates the vote is given; and any voter wilfully infringing any of the provisions of this clause, or obstructing the voting by any unnecessary delay in performing any act within the polling booth, or room, shall be deemed guilty of a misdemeanor.

No inquiry of a voter except as to his identity whether he has voted before on the same election and as to qualification

32. No inquiry shall be permitted at any election as to the right of any person to vote, except only as follows, that is to say: the Returning Officer or his Deputy shall, if required by any two electors entitled to vote in the same Electoral District, put to any voter at the time of his tendering his vote, and not afterwards, the following questions, or any of them, and no other:—

Form of questions to be put as to these points

FIRST—Are you the person whose name appears as A.B. in the electoral roll now in force for this Electoral District (or Division, being registered therein for property described to be situated in (here specify the street or place described in the electoral roll) ?)

SECOND—Have you already voted at the present election ?

THIRD—Had you, at the time of being registered, the qualification for which your name now stands in the electoral roll for the district of ———— (specifying in each case the particulars of the qualification as described in the electoral roll), and are you still possessed of the same qualification ? (or as the case may be. Are you of the age of twenty-one years, and did you at the time of being registered, and do you still reside within the District of ———— ?)

Punishment for false answer

And no person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same, nor if he shall have answered the same in such a manner as to show that he is not qualified to vote, and if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of a misdemeanor, and may be indicted and punished accordingly.

Punishment for voting twice, or personating voters

33. Every person who shall vote a second time, or offer to vote a second time, at the same election, for any Electoral District, or who shall personate any other person for the purpose of voting at such election, shall be guilty of a

misdemeanor; and upon being thereof convicted, shall be imprisoned for any term not more than two years, at the discretion of the Court who shall try such person.

Deputies to seal box and voting papers and deliver them forthwith to Returning Officers

34. Immediately before taking the votes, the Returning Officer or Deputy Returning Officer shall exhibit the ballot box empty, and each Deputy Returning Officer shall immediately on the close of the voting, publicly close and seal the box containing the voting papers which have been taken at the voting-place whereat he presided, and shall, with the least delay possible, deliver or cause the same to be delivered to the Returning Officer of the Electoral District, or to the Deputy Returning Officer for the Electoral Division, as the case may be; and in cases of elections of members to serve in the Legislative Council, the Deputy Returning Officers for each division shall, with the least delay possible, deliver or cause to be delivered the whole of such boxes to the Returning Officer for the said Province; and any Returning Officer or Deputy Returning Officer convicted of illegally dealing with the ballot boxes, shall be guilty of a misdemeanor and be liable to a penalty of not less than Fifty nor more than Two Hundred Pounds, and to imprisonment until the same be paid.

Names of persons elected to be declared by Returning Officer

35. The Returning Officer of each Electoral District shall at the place of nomination, and as soon as may be practicable after the election shall have been held, in the presence of two or more scrutineers, whereof each candidate shall name one, open all the boxes containing the voting papers delivered in at such election, and shall examine the same, and shall reject all voting papers which shall contain the names of more persons than are required to be elected at any such election, or shall contain any matter or thing other than such names, and shall openly declare the general state of the votes at the close of the election, as the same shall have been made up by him from the voting papers taken at the several voting-places; and he shall at the same time and place declare the name of the person or persons who may have been duly elected at such election; and in the event of the number of votes being found to have been equal for any two or more candidates he shall by his casting vote decide which of the same candidates shall be elected: Provided, however, that no Returning Officer shall vote at any election for the Electoral District of which he is the Returning Officer, except in case of an equality of votes as aforesaid: Provided also, that it shall and may be lawful for the deputy of any Returning Officer to vote at any election for the Electoral District, in like manner as if he had not been appointed and acted as such deputy.

Return of writs with names of elected persons endorsed thereon

36. The name of the person or persons so elected shall be inserted in or endorsed on the writ by the Returning Officer, and the writ returned to the Governor within the time by which the same may be returnable.

Voting papers to be destroyed by the Returning Officer

37. All voting papers shall be destroyed by the Returning Officer forthwith, after the declaration of the names of the persons duly elected.

Formation of Court for trial of complaints against the validity of returns by Returning Officer

38. For the purpose of forming a Court for the trial of any complaints which may be made against the validity of any returns made by the Returning Officers of the several electoral districts hereby created, the Legislative Council, within one week after its first meeting, and thereafter within one week after its first meeting subsequent to each election, shall supply the place of Members who shall retire by rotation, and the House of Assembly, within one week after the first meeting subsequent to every general election, shall elect, each out of its own body respectively, four persons to be Members of the said Court, and the junior or the sole acting Judge of the Supreme Court shall be the President of such Court.

Governor to appoint Members of Court, if Legislative Council or House of Assembly fail to elect

Nomination of Members of Court to supply vacancies

39. If the said Legislative Council or House of Assembly shall fail to elect the said four Members of the said Court within the said one week, such four Members may be nominated at any time afterwards by the President or Speaker, as the case may be; and if any Member shall be incapacitated to attend a meeting of the Court by reason of death, sickness, or any other impediment, his place shall be supplied by a person nominated for that purpose by the Legislative Council or House of Assembly respectively, or, in default of such nomination for the period of one week, by the President or Speaker.

Record of nomination of Members to be proof of proper constitution of Courts

40. The record of the election or nomination of the said Members of the said Courts respectively shall be entered by the Clerk of the Legislative Council or House of Assembly on the proceedings of the Houses; and proof of such entry having been made shall be sufficient authority for the proper constitution of such Courts.

Courts not to proceed to business unless convened by the Legislative Council or House of Assembly

41. The said Courts respectively shall not proceed to any business unless convened by order of the Legislative Council or House of Assembly, nor until each Member thereof shall take the following oath or affirmation, as the case may be, which shall be administered by the President to each of the Members, and afterwards by any Member to the President.

Oath to be taken by Members of the Court

"I, A.B., do swear (or affirm, as the case may be) that I will duly administer justice in all matters which may be brought before this Court, and that I will decide in all such matters according to the principles of good faith and equity, without partiality, favor, or affection, and according to the best of my understanding. So HELP ME GOD."

Powers of Court

42. The Courts thus constituted shall have power to inquire into all cases which may be brought before each Court by the House by which it shall have been appointed, respecting disputed returns of Members to serve in the said House, whether such disputes arise out of an alleged error in the return of the Returning Officer, or out of the allegation of bribery or corruption against any person concerned in any election, or out of any other allegation calculated to affect the validity of the return.

Courts to be guided only by the real justice and good conscience of each case

43. In the trial of any complaints as aforesaid, the Members of the said Courts shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct themselves by the best evidence that they can procure, or that is laid before them, whether the same be such evidence as the law would require in other cases or not.

Court may regulate the form of its own proceedings

Decisions to be given within five days, and to be final, without appeal

44. Each of the said Courts shall be an open Court, and shall have power to adjourn its sitting from time to time, as in its discretion it may think proper, provided that the interval of adjournment shall not in any instance exceed four days, and shall be competent to regulate the form of its own proceedings; but such proceedings shall in no one case extend beyond the period of five sitting days, unless by leave of the House by which it shall have been appointed; and that if no decision be adopted by a majority within five sitting days, or any enlarged period as aforesaid, the President of the Court shall, on such evidence as may then be before the Court, pronounce a decision; and that every decision, whether so pronounced by the President or by the Court, shall be final and conclusive, without appeal.

Inquiries by Court to be restricted to identity of voters, and propriety of admission or rejection of votes

45. The said Courts shall not have power to inquire into the correctness of any electoral roll, or into the qualifications of persons whose votes may on the day of election have been either admitted or rejected, but simply into the identity of the persons, and whether their votes were improperly admitted or rejected, assuming the roll to be correct.

Costs may be awarded

46. It shall be lawful for the said Courts respectively to award to the party petitioning, or to the candidate against whom the petition shall have been presented, such reasonable costs and expenses as such Court may deem fit; and such costs and expenses when awarded under the hand of the President, shall be recoverable by action of debt from the party by such award made liable to pay the same.

Complaints of undue returns to be by petition to the Legislative Council or House of Assembly

47. All complaints of the undue return of Members to serve in the Legislative Council or House of Assembly, shall be addressed in the form of a petition to the said Legislative Council and House of Assembly respectively; and no petition shall be noticed, nor any proceedings had thereon, unless it shall have been so presented by a person who was a candidate at the election whereof it may be alleged that an undue return has been made, or by a number of persons who either voted or were qualified to have voted at the said election, amounting to not less than one-tenth of the whole number on the roll of electors; and no petition shall be noticed which shall not be presented within twenty-one days from the day of election, or one week from the meeting of Parliament which shall last happen.

Petition to be referred to Court

48. Any such petition shall, within ten days after the same shall have been duly received, be referred to the Court above-mentioned, appointed by the House to which the said petition shall be addressed.

Proceedings of Courts on petitions

49. The said Courts respectively, in hearing and deciding on the merits of every such petition, shall be guided by the principles of good faith and equity, and shall receive or reject at their discretion any evidence that may be tendered to them, and shall have power to compel the attendance of witnesses and to examine them on oath; and if any such Court shall declare that any person was not duly elected who was returned as elected by the Returning Officer of any Electoral District, the person so declared to have been not duly elected shall cease to be a Member of the Legislative Council or House of Assembly, as the case may be; and if such Court shall declare any person to have been duly elected who was not returned by any Returning Officer, the person so declared to be duly elected shall be sworn a Member of the said Legislative Council or House of Assembly, as the case may be, and take his seat accordingly; and if such Court shall declare any election to have been absolutely void, the President or Speaker, on the same being certified to him by the President of the Court, shall forthwith cause to be issued a new writ for the holding of another election for such district.

What shall be deemed acts of bribery and corruption. 7 & 8 Geo. IV, Cap. 37, s. 2

50. The following acts shall be deemed and taken to be acts of bribery and corruption on the part of any candidate, whether committed by such candidate or by any agent authorized to act for him, that is to say—the giving of money or any other article whatsoever, cockades included, to any elector, with a view to influence his vote, or the holding out to him any promise or expectation of profit, advancement, or enrichment in any shape, in order to influence his vote, or making use of any threat to any elector, or otherwise intimidating him in any manner with a view to influence his vote; the treating of any elector, or the supplying him with meat, drink, lodging, or horse or carriage hire, or conveyance by steam or otherwise, whilst at such election, or whilst engaged in coming to or going from such election; the payment to any elector of any sum of money for acting or joining in any procession during such election, or before or after the same; the keeping open, or allowing to be kept open, any public-house, shop, booth, or tent, or place of entertainment, whether liquor or refreshment of any kind be distributed at such place of entertainment or not; the giving of any dinner, supper, breakfast, or other entertainment, at any place whatsoever, by a candidate to any number of electors, with a view of influencing their votes.

Any of the above acts to disqualify

51. The commission of any one of the above-mentioned acts shall, on proof thereof, by the decision of the above-mentioned Court, be held to render void the election of the person committing such act, and to disqualify him from sitting and voting in the said Parliament, during the whole period that may intervene between the commission of the same and the time of the next periodical or general election.

Principals bound by acts of their agents

52. The acts of all authorized agents, of a candidate or member shall, in matters connected with elections, be held to be the acts of their principal, provided that it shall be proved to the satisfaction of the above-mentioned Courts, that such acts were committed with his knowledge or consent.

Acts of bribery and corruption by persons not being the authorized agents

53. If any of the above-mentioned acts, hereby declared to be acts of bribery and corruption, shall be committed by any person not the authorized agent of any candidate or member, the person so committing, or having committed them, shall be deemed guilty of a misdemeanor, and may be indicted for such acts as for a misdemeanor in the Supreme Court, and punished with fine not exceeding Two Hundred Pounds, or imprisonment not exceeding six calendar months, at the suit or on the plaint of Her Majesty's Attorney or Advocate-General, or of any registered elector of the district wherein such act of bribery or corruption shall be alleged to have been committed.

Penalty on persons receiving or offering reward for voting or withholding vote

54. If any person who shall have, or claim to have, any right to vote in any election of a Member of the Legislative Council or House of Assembly for any

Electoral District shall, directly, or indirectly ask, receive, or take any money or other reward by way of gift, employment, or other reward whatsoever, for himself or for any of his family or kindred, to give his vote or to abstain from giving his vote in any such election; or if any person, by himself, his friends, or by any person employed by him, shall, by any gift or reward, or by any promise and agreement, or security for any gift or reward, procure any person to give his vote in any such election, or to abstain from giving the same, such offender shall, for such offence, forfeit the sum of Fifty Pounds sterling to the person who shall first sue for the same, to be recovered, with full costs, by action of debt, bill, plaint, or information, in the Supreme Court.

No action against candidate for costs or expenses of election

55. No action, suit, or other proceeding shall be maintainable in any Court of the said Province against any persons who may have been a candidate at any election for or in respect of any costs or expenses whatsoever in or about or relating to such election.

Remuneration to Returning Officers

56. For the remuneration of the Returning Officers, there shall be paid to them, in respect to the several matters and things by this Act directed to be performed by them, the several sums mentioned in the Schedule K to this Act annexed, and no other, and such payments shall be made by the Treasurer, in pursuance of warrants under the hand of the Governor.

Provision in the event of impediments of a formal nature

57. No election shall be held to be void in consequence solely of any delay of the holding of such election at the time appointed, or in the return of the writ, or the absence of the Returning Officer, or any deputy, or any error on the part of any Returning Officer or deputy, which shall not affect the result of the election, or of any error or impediment of a mere formal nature; and within the period of twenty days before or after the day appointed for the holding of any election, it shall be lawful for the said Governor, with the advice of the Executive Council, to extend the time allowed for the holding of such election, or for the return of the writ issued for the same, and to adopt or cause to be adopted such measures as may be necessary to remove any obstacle by which the due course of any election may be impeded, and to supply any deficiency that may otherwise affect the same; Provided that any measures so adopted by the Governor, with the advice of the Executive Council, shall be duly notified in the South Australian Government Gazette.

Declarations to be made by officers before a Justice and to be transmitted to Chief Secretary

58. Every person who may, under the provisions hereof, be appointed a Returning Officer, or Deputy Returning Officer, shall, before he enters on the performance of any duty under the same, make and subscribe, before a Justice of the Peace, the following declaration, and the Justice before whom such

declaration may be made, is hereby required to transmit the same, by the first convenient opportunity, to the Chief Secretary of South Australia—

"I (A.B.) do hereby declare that I accept the office of ——— and I do hereby promise and declare that I will faithfully perform the duties of the same, to the best of my understanding and ability, and that I will not reveal or disclose any knowledge that I may acquire in the discharge of my said office touching the vote of any elector."

Penalty on officers refusing or neglecting duty

59. If any Returning Officer, or any Deputy Returning Officer, after having accepted office as such, shall neglect or refuse to perform any of the duties which by the provisions hereof, he is required to perform, every such Returning Officer, or Deputy Returning Officer, shall, for every such offence, forfeit and pay any sum not less than Ten, nor exceeding Two Hundred Pounds; and, in like manner, if any clerk or other officer or person appointed or required to perform any duty, under or by virtue of this Act, shall neglect or refuse to perform any of the duties which by the provisions hereof he is required to perform, every such clerk or other officer or person shall, for every such offence, forfeit and pay any sum not less than Five, and not exceeding Fifty Pounds.

Recovery and application of penalties

60. The respective penalties before mentioned shall be recovered, with full costs of suit, by any person who shall sue for the same within three calendar months after the commission of such offence, by action in the Supreme Court of the said Province; and the money so recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows, that is to say—one moiety thereof to the person so suing, and the other moiety thereof to Her Majesty for the public uses of the Province and support of the Government thereof.

Where matters to be done fall on a holiday

61. When any matter or thing is hereby directed to be performed on a certain day, and that day shall happen to be Sunday, Good Friday, Christmas Day, or other public holiday, the said matter or thing may be performed on the next succeeding day, not being any of the days aforesaid.

Commencement of Act

62. This Act shall come into operation from and after the passing thereof.

Short title

63. In referring to this Act it shall be sufficient to make use of the expression "The Electoral Act."

NOTE.—This act was copied for the author through the courtesy of the Parliamentary Library at Ottawa, Canada.

APPENDIX B

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(170 Ill. 370)
People v. *Parkhurst*
(53 N.Y. Suppl. 598)
People v. *Pease*
(27 N.Y. 45)
People v. *Richmond Co.*
(156 N.Y. 36)
People v. *Rose*
(71 N.E. Rep. 1123)
People v. *Shaw*
(133 N.Y. 493)
People v. *Wappinger Falls*
(30 N.Y. Suppl. 265)
Perkins v. *Bertrand*
(192 Ill. 58)
Phelps v. *Piper*
(48 Neb. 724)
Price v. *Lush*
(10 Mont. 61)
Rhodes v. *Driver*
(64 S.W. Rep. 272)
Ritchie v. *Richards*
(14 Utah 345)
Roberts v. *Quest*
(173 Ill. 427)
Rogers v. *Jacob*
(88 Ky. 502)
Sanner v. *Patton*
(155 Ill. 553)
Schuler v. *Hogan*
(168 Ill. 369)
Sego v. *Stoddard*
(136 Ind. 297)
Shields v. *Jacobs*
(88 Mich. 164)
Short v. *Gouger*
(130 S.W. 267)
Slaymaker v. *Phillips*
(5 Wyo. 453)
Slenker v. *Engel*
(250 Ill. 499)
State v. *Allen*
(43 Neb. 651)
State ex rel. Runge v. *Anderson*
(100 Wis. 523)
State v. *Black*
(54 N.J. L. 446)
State v. *Bode*
(55 Ohio St. 224)
State v. *Burdick*
(6 Wyo. 448)
State v. *Connor*
(86 Tex. 133)
State v. *Dillon*
(32 Fla. 545)
State v. *Fawcett*
(17 Wash. 188)
State v. *Gay*
(59 Minn. 6)
State v. *Howser*
(100 N.W. Rep. 964)
State v. *Lesueur*
(103 Mo. 253)
State v. *McMillan*
(108 Mo. 153)
State v. *Norris*
(37 Neb. 299)
State v. *Ramsey Co. Dist. Ct.*
(74 Minn. 177)
State v. *Sadler*
(25 Nev. 131)
State v. *Walsh*
(62 Conn. 260)
State v. *Winnett*
(100 N.W. Rep. 1113)
Sweeney v. *Hjul*
(23 Nev. 409)
Tandy v. *Lavery*
(194 Ill. 372)
Taylor v. *Bleakley*
(55 Kan. 1)
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INDEX